

No. 10560

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United States  
Circuit Court of Appeals

VL  
2381

For the Ninth Circuit.

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E. J. JONES,

Appellant,

vs.

JIM BRUSH, State Treasurer of the State of Arizona, SIDNEY P. OSBORN, Governor of the State of Arizona, DAN E. GARVEY, Secretary of State of the State of Arizona, MARICOPA COUNTY, JOHN A. FOOTE, ED OGLESBY and PHIL ISLEY, constituting the Board of Supervisors of Maricopa County, Arizona,

Appellees.

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Transcript of Record

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Upon Appeal from the District Court of the United States for the District of Arizona

FILED

OCT 23 1913

PAUL P. O'BRIEN,  
CLERK



**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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E. J. JONES,

Appellant,

vs.

JIM BRUSH, State Treasurer of the State of Arizona, SIDNEY P. OSBORN, Governor of the State of Arizona, DAN E. GARVEY, Secretary of State of the State of Arizona, MARICOPA COUNTY, JOHN A. FOOTE, ED OGLESBY and PHIL ISLEY, constituting the Board of Supervisors of Maricopa County, Arizona,

Appellees.

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**Transcript of Record**

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**Upon Appeal from the District Court of the United  
States for the District of Arizona**



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States  
for the District of Arizona

No. CIV-385 Phx.

E. J. JONES,

Plaintiff,

vs.

JIM BRUSH, State Treasurer of the State of Arizona, SIDNEY P. OSBORN, Governor of the State of Arizona, DAN E. GARVEY, Secretary of State of the State of Arizona, MARICOPA COUNTY, JOHN A. FOOTE, ED OGLESBY and PHIL ISLEY, constituting the Board of Supervisors of Maricopa County, Arizona,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT DECLARING THAT CERTAIN HIGHWAY BONDS OF MARICOPA COUNTY HELD IN THE STATE SCHOOL FUND ARE NOT SUBJECT TO CALL BEFORE THEIR DUE DATE

Comes now E. J. Jones, the plaintiff, and for cause of action against the defendants alleges, as follows:

I.

That plaintiff now is and for many years has been a citizen and a resident and taxpayer of the State of Arizona and, as such citizen, resident and tax-



payer, has the right to enforce the trusts created by Sections 24, 25, 26, 27 and 28 of the Enabling Act of the State of Arizona.

## II.

That the defendant, Jim Brush, is the State Treasurer of the State of Arizona and as such State Treasurer is the trustee or custodian of the funds and securities derived by said State from donations by the United States to said State in trust, under the provisions of the Enabling Act providing for the admission of Arizona as a state, and is charged with the duty of investing the funds of said trusts; that the defendants, Sidney P. Osborn and Dan E. Garvey, are Governor and Secretary of State, respectively, of the State of Arizona and, as such [4] Governor and Secretary of the State, are charged with the duty of approving of securities in which the State Treasurer invests monies of said trusts; that defendant, Maricopa County, is a county of the State of Arizona; that John A. Foote, Ed Oglesby and Phil Isley constitute the Board of Supervisors of said Maricopa County; that all of the individual defendants herein named are sued in their official capacity above set forth.

## III.

That jurisdiction of the United States District Court for the District of Arizona is invoked in this suit upon the ground that this is a case arising under the Constitution and laws of the United States and particularly under the Act of Congress ap-

proved June 20, 1910, commonly known as the Enabling Act of the States of New Mexico and Arizona.

#### IV.

That defendant, Jim Brush, by virtue of his office as the State Treasurer of the State of Arizona, is the trustee or custodian of a total of Fifty-six Thousand (\$56,000.00) Dollars par value of the two issues of Maricopa County Highway bonds hereinafter described; that Thirty-one Thousand (\$31,000.00) Dollars of said bonds are of the issue of 1919, bearing  $5\frac{1}{2}\%$  interest per annum, and, according to their terms, become due and payable on the fifteenth day of June during the years 1945 to 1949, inclusive; that Twenty-five Thousand (\$25,000.00) Dollars par value of said bonds are of the issue of 1921, bearing Six (6%) per cent interest per annum and, according to their terms, become due and payable on the fifteenth day of January during the years 1944 to 1951, both inclusive; that all of the aforesaid bonds are owned by the State of Arizona and are held in that portion of the trust created by Sections 24 to 28, both inclusive, of the Enabling Act of the State of Arizona, known [5] as the Permanent School Fund; that all of the aforesaid bonds are due and payable on definite dates within the limits above mentioned; that the difference between the value of the above mentioned bonds if defendant, Maricopa County, is legally bound to pay the agreed rate of interest thereon until the respective due dates therein specified as

is contended by the plaintiff and the value of said bonds if they are presently subject to call for redemption by said Maricopa County as is contended by said Maricopa County greatly exceeds the sum of Three Thousand (\$3,000.00) Dollars.

## V.

That at all times when any bonds herein mentioned were voted, authorized, advertised for sale, sold, issued, paid for and delivered, the counties of the State of Arizona, of which defendant, Maricopa County, is one, were authorized and empowered to issue negotiable bonds under the terms and provisions of Chapter II, Title 52, Sections 5266 to 5285, Revised Statutes of Arizona for 1913; that said Chapter II, Title 52, among other things provided that if the proposed indebtedness to be created by said bonds would cause said county to become indebted in excess of four (4%) per cent of the value of taxable property in such county to be ascertained by the last assessment for State and County purposes previous to such proposed incurring of such indebtedness, said proposed bond issue should be submitted to the property taxpayers of the county, and said Chapter II, Title 52, contained the following specific provisions:

(1) In Section 5273, that in the call for election there shall be "set forth the aggregate amount of said bonds, the term thereof, the rate of interest to be paid thereon, when such interest shall be paid, the date of maturity of

said [6] bonds, or other evidences of indebtedness and the purposes for which the money derived from the sale of such bonds or other evidence of indebtedness shall be expended”.

(2) In Section 5274 that said bonds “shall be signed and attested \* \* \* by the Chairman and Clerk of the Board of Supervisors”, and further, that “said bonds shall be payable at a date not to exceed forty (40) years from the date of their issuance.”

(3) In Section 5275, that “said bonds shall be payable to bearer and coupons for the interest shall be attached to each of the said bonds.”

(4) In Section 5275, “that none of said bonds or other evidences of indebtedness shall be sold for a less amount than par with accrued interest.”

(5) In Section 5278, “and until all of said bonds or other evidences of indebtedness of such county are redeemed the board of supervisors of such county where such indebtedness is created under the provisions of this chapter \* \* \* is authorized, and it shall be its duty, to levy and cause to be collected a tax in addition to the amount of taxes which now or hereafter may be authorized by law for state and county purposes at the same time and in the same manner as other taxes are levied and collected by such county \* \* \* upon all taxable property in such county \* \* \* sufficient to pay the

interest on all bonds issued when such interest shall become due, and said tax when collected shall constitute a fund for the payment of interest on said bonds or other evidences of indebtedness and shall be called 'Interest Fund' ''.

(6) In Section 5279, "The Board of Supervisors of any county where any indebtedness shall be created under the provisions of this chapter \* \* \* shall also, and in addition [7] to the taxes for state and county purposes, \* \* \* and the tax hereinabove provided to be levied for the payment of interest on such bonds or other evidences of indebtedness, levy a tax for the purpose of redeeming said bonds or other evidence of indebtedness when the same shall mature as specified in the order and call for election hereinbefore in this chapter provided to be made, and all money derived from the levy of the tax in this section provided for when collected shall constitute a fund and shall be called the 'Redemption Fund' and shall be used for the redemption of said bonds or other evidences of indebtedness according to the number of their issue. The tax in this section provided to be levied shall be levied annually so as to provide a fund for the redemption of such bonds or other evidences of indebtedness when the same shall mature."

(7) In Section 5281, "When any bonds or other evidences of indebtedness created under

the provisions of this chapter shall mature it shall be the duty of the county treasurer \* \* \* to give notice for four weeks in some newspaper published in the county in which such bonds or other evidences of indebtedness shall have been issued, of the intention of such county \* \* \* to redeem such bonds, stating the amount thereof, and such redemption shall be made by the county \* \* \* and all said bonds or evidences of indebtedness shall cease to draw interest at the expiration of four weeks after the date of said notice, and if said bonds so noticed for redemption shall not be presented for redemption within three months from the date of such notice said county treasurer \* \* \* shall apply said money to the redemption of the bonds next in the order of the number of their issue."

(8) In Section 5281, "The Board of Supervisors \* \* \* issuing bonds or other evidences of indebtedness under pro- [8] visions of this chapter shall, by resolution entered upon its minutes prior to the offering for sale of said bonds or other evidences of indebtedness, and within a period of fifteen (15) days from the canvassing of the vote of the election herein provided for, prepare a form of bond which shall substantially conform to the description of said bonds mentioned in the order required by this chapter published and recorded."



## VI.

That there was no provision whatsoever in said Chapter II, Title 52, Arizona Revised Statutes of 1913, nor any statute, law, custom or practice of the State of Arizona at the date of the issuance of the bonds hereinabove mentioned, authorizing or contemplating the calling of said bonds before their maturity dates, and that the only provision of the statutes, laws, customs or practice of the State of Arizona and the counties and other legal subdivisions thereof at the time of the issuance of the above mentioned bonds were the express provisions of the statute above set forth authorizing a redemption of said bonds after the maturity dates thereof.

## VII.

That in the year 1917 there was passed and became a law of the State of Arizona, Chapter 31 of Arizona Session Laws of 1917, which provides for the creation of county highway commissions and expressly authorizes the issuance of bonds for the construction and improvement of highways of the county. Said section provides that bonds might be issued and sold as other county bonds. That said Chapter 31 above mentioned was amended on March 17th, 1919, by Chapter 63 of the Session Laws of 1919, and on March 19th, 1919, by Chapter 101 of the Session Laws of 1919, and on March 20th, 1919, by Chapter 121 of the Session Laws of 1919. That none of such amendments made any change in said Chapter 31 material to the issues of this case. [9]

## VIII.

That pursuant to said Chapter 31 of the Session Laws of 1917, the Board of Supervisors of defendant, Maricopa County, on April 10th, 1919, adopted an order calling an election of the property taxpayers of said county to be held May 17th, 1919, to determine whether the bonds of said county in the sum of Four Million (\$4,000,000.00) Dollars, should be issued and sold for the purpose of constructing and improving hard surfaced highways in said county, and said resolution specified that the rate of interest of said proposed bonds should be five and one-half ( $5\frac{1}{2}\%$ ) per cent per annum, payable semi-annually, and the terms and dates of maturity of said bonds should be as follows:

“\$100,000.00 thereof to run for a term of 11 years and to mature on June 15, A. D. 1930;

\$100,000.00 thereof to run for a term of 12 years and to mature on June 15, A. D. 1931;

\$100,000.00 thereof to run for a term of 13 years to mature on June 15, A. D. 1932;

\$100,000.00 thereof to run for a term of 14 years and to mature June 15, 1933;

\$100,000.00 thereof to run for a term of 14 years and to mature June 15, 1933;

\$100,000.00 thereof to run for a term of 15 years and to mature on June 15, 1934;

\$200,000.00 thereof to run for a term of 16 years and to mature on June 15, 1935;

\$200,000.00 thereof to run for a term of 17 years and to mature on June 15, 1936;



\$200,000.00 thereof to run for a term of 18 years and to mature on June 15, 1937;

\$200,000.00 thereof to run for a term of 19 years and to mature on June 15th, 1938;

\$200,000.00 thereof to run for a term of 20 years and to mature on June 15, 1939;

\$200,000.00 thereof to run for a term of 21 years and to mature on June 15, 1940;

\$200,000.00 thereof to run for a term of 22 years and to mature on June 15, 1941; [10]

\$200,000.00 thereof to run for a term of 23 years and to mature on June 15, 1942;

\$200,000.00 thereof to run for a term of 24 years and to mature on June 15, 1943;

\$200,000.00 thereof to run for a term of 25 years and to mature on June 15, 1944;

\$300,000.00 thereof to run for a term of 26 years and to mature on June 13, 1945;

\$300,000.00 thereof to run for a term of 27 years and to mature June 15, 1946;

\$300,000.00 thereof to run for a term of 28 years and to mature June 15, 1947;

\$300,000.00 thereof to run for a term of 29 years and to mature June 15, 1948; and

\$300,000.00 thereof to run for a term of 30 years and to mature June 15, 1949.”

That notice of said election was given by posting and publication as provided by law and that said notice so posted and published was the order for election and contained the description of said bonds

as above set forth including the terms and dates of maturity thereof;

### IX.

That said bonds were approved by the majority of the property taxpayers of the county at said election, and thereafter, on June 2nd, 1919, the said Board of Supervisors of said county canvassed the returns of said election and embodied the facts determined upon said canvass in a certificate and filed and recorded the same in the office of the County Recorder of said county, and in said certificate it was declared as follows:

“That the rate of interest upon said proposed bonds is to be five and one-half ( $5\frac{1}{2}$ ) per cent per annum, payable semi-annually and the terms and dates of maturity of said bonds to be as follows, to-wit:

\$100,000.00 thereof to run for a term of 11 years and to mature on June 15, A. D. 1930;

\$100,000.00 thereof to run for a term of 12 years and to mature on June 15, A. D. 1931;

[11]

\$100,000.00 thereof to run for a term of 13 years to mature on June 15, A. D. 1932;

\$100,000.00 thereof to run for a term of 14 years and to mature on June 15, A. D. 1933;

\$100,000.00 thereof to run for a term of 15 years and to mature on June 15, A. D. 1934;

\$200,000.00 thereof to run for a term of 16 years and to mature on June 15, A. D. 1935;

\$200,000.00 thereof to run for a term of 17 years and to mature on June 15, A. D. 1936;

\$200,000.00 thereof to run for a term of 18 years and to mature on June 15, A. D. 1937;

\$200,000.00 thereof to run for a term of 19 years and to mature on June 15, A. D. 1938;

\$200,000.00 thereof to run for a term of 20 years and to mature on June 15, A. D. 1939;

\$200,000.00 thereof to run for a term of 21 years and to mature on June 15, A. D. 1940;

\$200,000.00 thereof to run for a term of 22 years and to mature on June 15, A. D. 1941;

\$200,000.00 thereof to run for a term of 23 years and to mature on June 15, A. D. 1942;

\$200,000.00 thereof to run for a term of 24 years and to mature on June 15, A. D. 1943;

\$200,000.00 thereof to run for a term of 25 years and to mature on June 15, A. D. 1944;

\$300,000.00 thereof to run for a term of 26 years and to mature June 15, A. D. 1945;

\$300,000.00 thereof to run for a term of 27 years and to mature on June 15, A. D. 1946;

\$300,000.00 thereof to run for a term of 28 years and to mature on June 15, A. D. 1947;

\$300,000.00 thereof to run for a term of 29 years and to mature on June 15, A. D. 1948;  
and

\$300,000.00 thereof to run for a term of 30 years and to mature on June 15, A. D. 1949.”

## X.

That thereafter, on June 4th, 1919, the said Board of Supervisors adopted a resolution preparing and

fixing the form of said bonds and in said resolution declared that "The bonds of the County of Maricopa to be issued and sold pursuant to [12] the county road bond election held May 17, 1919 in the total amount of Four Million (\$4,000,000.00) Dollars, shall be of the denomination of One Thousand (\$1,000.00) Dollars each; shall be Four Thousand (4,000) in number, shall be numbered from one (1) to four thousand (4,000) inclusive; shall be each dated June 15, 1919; shall each bear interest from date thereof at the rate of five and one-half (5½%) per cent per annum, payable semi-annually on the 15th day of June and December of each year at the office of the County Treasurer of said County of Maricopa; and shall mature upon the respective dates specified in the resolution of the Board of Supervisors dated April 10, 1919, calling the aforesaid election, and on the ballots used by the electors at said election and in the certificate of the Board of Supervisors heretofore and on June 1, 1919, filed in the office of the County Recorder of said Maricopa County; and shall each and all strictly conform in their tenor and terms to the aforesaid resolution calling said road bond election." That the form of bond thereafter set forth in said resolution is attached hereto and marked Exhibit "A" and made a part hereof.

That said resolution further provided

"that each of said series of four thousand bonds shall have attached thereto such number of semi-annual interest coupons in the sum of

Twenty-seven and 50/100 (\$27.50) Dollars, each, and payable on the 15th day of June and the 15th day of December of each year during the term of said bond as shall be sufficient to evidence all the interest to become due on said bond during the term thereof, and the form of each of said interest coupons is hereby prepared and fixed as follows, to-wit:

The County of Maricopa, State of Arizona, hereby promises to pay to the holder hereof on the 15th day of .....19....., at the office of the County Treasurer of [13] the County of Maricopa, State of Arizona, Twenty-seven and 50/100 (\$27.50) Dollars, in gold coin of the United States, the semi-annual interest on its highway bond numbered.....

Election of May 17, 1919.

W. K. Bowen

Chairman, Board of Supervisors  
Maricopa County, State of  
Arizona.

Attest:

Clarence L. Standage

Clerk, Board of Supervisors  
Maricopa County, Arizona.

Coupon No. ....”

## XI.

That no recital in said bonds or coupons nor any statement therein contained, gave any indication whatsoever that said bonds or any of them were

subject to call for redemption before their maturity dates, nor did any recital or statement in said bonds or coupons call attention to any statute, law, practice or custom, providing for the call of said bonds for redemption before their respective due dates, and no such statutes, law, practice or custom, ever existed or was suggested in the State of Arizona prior to the attempt to call such bonds for redemption in the year 1942.

## XII.

That thereafter said Board of Supervisors caused to be published a notice inviting proposals for the purchase of said bonds, and said notice contained the following provision:

“Said bonds to be serial bonds, part of which shall mature on the 15th day of June of each year from the year 1930 to the year 1949, both inclusive, as more specifically described in that certificate of the Board of Supervisors relating to said bonds recorded in the office of the County Recorder of Maricopa County of June 2, 1919, in Book 19 of Miscellaneous Records, at page 357.”

That the certificate referred to was so recorded in the County Recorder's office and gave the dates of maturity of said bonds as set forth in the order for said bonds hereinabove [14] set forth.

## XIII.

That bids for said bonds were received and the bid of Graves, Blanchet and Thornburgh and asso-



ciates, was accepted. Said bid contained the following provisions:

“For the Four Million Dollars par value legally issued Highway Bonds of Maricopa County, Arizona, complying in all respects with the description of same as contained in your official advertisement of sale, and to be delivered to us on the basis of delayed deliveries as outlined in your Official Notice of Sale, we will pay par and accrued interest to date of deliveries of the bonds, and in addition thereto a premium of Thirty-two Thousand Five Hundred (\$32,500.00) Dollars.”

#### XIV.

That after the said bid was accepted, and on the 9th day of July, 1919, defendant, Maricopa County, entered into a formal written contract with the bidders, providing for the sale and purchase of said bonds and that in said contract said Maricopa County expressly covenanted and agreed to sell to the purchasers and the purchasers covenanted and agreed to purchase from said Maricopa County, “the highway bonds of said Maricopa County authorized to be issued by the election held May 17th, 1919, in the amount of \$4,000,000.00 par value; said bonds to comply in all respects with the description of the same as contained in the ‘Notice Inviting Proposals’ hereinabove set forth.” That said contract was regularly executed by the Chairman and Clerk of the Board of Supervisors of said Maricopa County by authority of a resolution adopted by said Board of Supervisors on July 9th, 1919.

## XV.

That after all of said issue of bonds had been executed upon the form set forth in "Exhibit A" hereto attached, and the bid of the purchasers therefor had been accepted, and the formal contract for the purchase thereof between said Maricopa [15] County and the purchasers had been executed, and after three thousand of said bonds had been delivered to the purchasers and one thousand of said bonds remained to be delivered to said purchasers the legislature of the State of Arizona adopted Chapter 54 of the Session Laws of 1921, ratifying, approving and validating said bonds and the sale thereof, and in said Act said legislature declared, "that the bonds of the County of Maricopa in the sum of Four Million (\$4,000,000.00) Dollars, authorized by the election of the property taxpayers of said county held May 17, 1919, for the purpose of providing funds for the construction and improvement of certain portions of the public highways of Maricopa County and the contract for the sale of such bonds entered into by the Board of Supervisors of said Maricopa County, with Graves, Blanchett, Thornburgh, and associates, on the 9th day of July, 1919, are hereby ratified, approved and declared valid," and in said Act said legislature further declared, "all acts and parts of acts in conflict with the provisions of this act are hereby repealed."

## XVI.

That after the ratification of said bonds by said Chapter 54 of the Session Laws of 1921, they were



sold in the open market to various purchasers and, thereafter, in reliance upon the proceedings of the Board of Supervisors of Maricopa County fixing definite maturity dates for said bonds and providing for the payment of interest thereon at the rate specified in said bonds until the due dates thereof, and in reliance upon the above-mentioned Act of the legislature of the State of Arizona ratifying and approving said bonds in the form authorized as above set forth, and the contract and agreement entered into by said Maricopa County and the purchasers of said bonds, the State Treasurer of the State of Arizona, predecessor in office of defendant, Jim Brush, with the approval of the Governor and [16] Secretary of State, predecessors in office of defendants, Sidney P. Osborn and Dan E. Garvey, respectively, purchased Thirty-one Thousand (\$31,000.00) Dollars par value of the aforesaid bonds and paid therefor out of the trust funds in their control, under the provisions of Section 28 of said Enabling Act, in addition to the par value of said bonds, a large premium for the right to collect interest on said bonds at the rate therein specified until the respective maturity dates specified in said bonds; that said Thirty-one Thousand dollars par value of said bonds so purchased were purchased with funds belonging to and were placed in the State Permanent School Fund, which is one of the funds of said trust, and have so come into the possession of the defendant, Jim Brush, as State Treasurer, and are now so held by him.

## XVII.

That pursuant to said Chapter 31 of the Session Laws of 1917 and amendments thereto the Board of Supervisors of defendant, Maricopa County, on November 30, 1920, adopted an order calling an election of the property taxpayers of said county to be held December 31, 1920, to determine whether the bonds of said county in the additional sum of \$4,500,000.00 should be issued and sold for the purpose of constructing and improving hard surfaced highways in said county, and said resolution specified that the rate of interest of said proposed bonds should be 6% per annum, payable semi-annually, and the terms and dates of maturity of said bonds should be as follows:

\$100,000.00 thereof to run for a term of 10 years and to mature on January 15, A. D. 1931,

\$100,000.00 thereof to run for a term of 11 years and to mature on January 15, A. D. 1932,

\$100,000.00 thereof to run for a term of 12 years and to mature on January 15, A. D. 1933,

\$100,000.00 thereof to run for a term of 13 years and to mature January 15, 1934, [17]

\$100,000.00 thereof to run for a term of 14 years and to mature on January 15, 1935,

\$200,000.00 thereof to run for a term of 15 years and to mature on January 15, 1936,

\$200,000.00 thereof to run for a term of 16 years and to mature on January 15, 1937,

\$200,000.00 thereof to run for a term of 17 years and to mature on January 15, 1938,

\$200,000.00 thereof to run for a term of 18 years and to mature on January 15, 1939,

\$200,000.00 thereof to run for a term of 19 years and to mature on January 15, 1940,

\$200,000.00 thereof to run for a term of 20 years and to mature on January 15, 1941,

\$200,000.00 thereof to run for a term of 21 years and to mature on January 15, 1942,

\$200,000.00 thereof to run for a term of 22 years and to mature on January 15, 1943,

\$200,000.00 thereof to run for a term of 23 years and to mature on January 15, 1944,

\$200,000.00 thereof to run for a term of 24 years and to mature on January 15, 1945,

\$300,000.00 thereof to run for a term of 25 years and to mature on January 15, 1946,

\$300,000.00 thereof to run for a term of 26 years and to mature January 15, 1947,

\$300,000.00 thereof to run for a term of 27 years and to mature January 15, 1948,

\$300,000.00 thereof to run for a term of 28 years and to mature January 15, 1949,

\$300,000.00 thereof to run for a term of 29 years and to mature January 15, 1950, and

\$500,000.00 thereof to run for a term of 30 years and to mature January 15, 1951.

That notice of said election was given by posting and publication as provided by law and that said notice so posted and published was the order for

election and contained the description of said bonds as above set forth, including the terms and dates of maturity thereof. [18]

### XVIII.

That said bonds were approved by the majority of the property taxpayers of the county at said election and thereafter, on January 20, 1921, the said Board of Supervisors of said county canvassed the returns of said election and declared said bond issue to have been approved by said taxpayers and thereafter, on November 2, 1921, said Board of Supervisors embodied the facts determined from said canvass in a certificate and filed and recorded the same in the office of the county recorder of said county, and in said certificate it was declared as follows:

“The rate of interest upon the said proposed bonds shall be six percentum (6%) per annum, payable semi-annually and the terms and dates of maturity of said bonds shall be as follows, to-wit:

\$100,000.00 thereof to run for a term of 10 years and to mature on January 15, A.D. 1931;  
\$100,000.00 thereof to run for a term of 11 years and to mature on January 15, A.D. 1932;  
\$100,000.00 thereof to run for a term of 12 years and to mature on January 15, A.D. 1933;  
\$100,000.00 thereof to run for a term of 13 years and to mature on January 15, 1934;

\$100,000.00 thereof to run for a term of 14 years and to mature on January 15, 1935;  
\$200,000.00 thereof to run for a term of 15 years and to mature on January 15, 1936;  
\$200,000.00 thereof to run for a term of 16 years and to mature on January 15, 1937;  
\$200,000.00 thereof to run for a term of 17 years and to mature on January 15, 1938;  
\$200,000.00 thereof to run for a term of 18 years and to mature on January 15, 1939;  
\$200,000.00 thereof to run for a term of 19 years and to mature on January 15, 1940;  
\$200,000.00 thereof to run for a term of 20 years and to mature on January 15, 1941;  
\$200,000.00 thereof to run for a term of 21 years and to mature on January 15, 1942;  
\$200,000.00 thereof to run for a term of 22 years and to mature on January 15, 1943; [19]  
\$200,000.00 thereof to run for a term of 23 years and to mature on January 15, 1944;  
\$200,000.00 thereof to run for a term of 24 years and to mature on January 15, 1945;  
\$300,000.00 thereof to run for a term of 25 years and to mature on January 15, 1946;  
\$300,000.00 thereof to run for a term of 25 years and to mature January 15, 1947;  
\$300,000.00 thereof to run for a term of 27 years and to mature January 15, 1948;  
\$300,000.00 thereof to run for a term of 28 years and to mature January 15, 1949;

\$300,000.00 thereof to run for a term of 29 years and to mature January 15, 1950; and \$500,000.00 thereof to run for a term of 30 years and to mature January 15, 1951."

### XIX.

That thereafter, on the 2nd day of November, 1921, the said Board of Supervisors adopted a resolution preparing and fixing the form of said bonds and in said resolution declared that:

"The bonds of the County of Maricopa to be issued and sold pursuant to the County Road Bond Election held December 31, 1920, in the total amount of Four Million Five Hundred Thousand (\$4,500,000.00) Dollars, shall be in the denomination of One Thousand (\$1,000.00) Dollars each, shall be four thousand five hundred (4,500) in number, shall be numbered from 4,100 to 8,500 inclusive, shall each be dated January 15, 1921, shall each bear interest from the date thereof at the rate of 6% per annum, payable semi-annually, on the 15th day of January and July in each year at the office of the County Treasurer of the said County of Maricopa, State of Arizona, and shall mature upon the respective dates specified in the resolution of the Board of Supervisors, dated the 16th day of August, calling for the aforesaid election, and on the ballots for the electors in the said election and in the certificate of the



Board of Supervisors heretofore on the 8th day of November, 1921, filed in the office of the County Recorder of Maricopa County, and each and all shall strictly conform in tenor and terms to the aforesaid resolution calling said Road Bond Election, the ballots used by the electors at said election, and the aforesaid certificate of the Board of Supervisors recorded on November 8, 1921.” [20]

That the form of bond thereafter set forth in said Resolution is attached hereto, marked “Exhibit B”, and made a part hereof.

That said Resolution further provided,

“That each of said series of 4,500 bonds shall have attached thereto such number of semi-annual interest coupons in the sum of Thirty (\$30.00) Dollars each and payable on the 15th day of January and the 15th day of July of each year during the term of said bond as shall be sufficient to evidence all the interest to become due on said bond during the term thereof and the form of each of said interest coupons is hereby prepared and fixed as follows, to-wit: (except changes as to dates of payments) ‘The County of Maricopa, State of Arizona, hereby promises to pay to the holder hereof on the 15th day of January, 19....., at the office of the County Treasurer of the County of Maricopa, State of Arizona, Thirty (\$30.00) Dollars in

gold coin of the United States for the semi-annual interest on its highway bond No.....

Election of December 31, 1920.

.....  
Chairman, Board of Supervisors  
of Maricopa County, State of  
Arizona.

Attest:

.....  
Clerk, Board of Supervisors,  
Maricopa County, State of  
Arizona.

Coupon No.....' "

## XX.

That no recital in said bonds or coupons or any statement therein contained gave any indication whatsoever that said bonds or any of them were subject to call for redemption before their maturity dates nor did any recital or statement in said bonds or coupons call attention to any statute, law, practice or custom providing for the call of said bonds for [21] redemption before their respective due dates and no such statute, law, practice or custom ever existed or was suggested in the State of Arizona prior to the attempt to call such bonds for redemption in the year 1942.

## XXI.

That thereafter said Board of Supervisors caused to be published a notice inviting proposals for the



purchase of said bonds and said notice contained the following provision:

“Said bonds to be serial bonds, part of which will mature on the 15th day of January of each year from the year 1931 to the year 1951, both inclusive, as more specifically prescribed in that certificate of the Board of Supervisors relating to the said bonds, recorded in the office of the county recorder of said Maricopa County on November 8, 1921, in Book 24, page 345 of Miscellaneous Records;”

That the certificate referred to was so recorded in the County Recorder's office and gave the dates of the maturity of said bonds as set forth in the order for said bonds hereinbefore set forth.

## XXII.

That bids for said bonds were received and the bid of Harris Trust & Savings Bank, William R. Compton Company, Northern Trust Company, Union Trust Company, and Bankers Trust Company, of Denver, was accepted. Said bid was made for the bonds containing the terms of the bonds as set forth in the form attached hereto, marked “Exhibit B,” and for the maturities set forth in the proceedings of said Board of Supervisors for the issuance of said bonds as hereinabove set forth, and the amount of said bid was Four Million Eight Hundred Thousand, One Hundred Fifty (\$4,800,150.00) Dollars, cash, for the four million five hundred thousand (\$4,500,000.00) Dollars of bonds.

## XXIII.

That after the election of the property taxpayers approving issuance of said Four Million Five Hundred Thousand [22] (\$4,500,000.00) Dollars of bonds, and after the canvass of the results of said election, and after the determination of the maturities of said bonds as set forth in the order for election, and the call for said election, and as approved by the property taxpayers at said election and prior to the notice inviting proposals for the sale of said bonds, the legislature of the State of Arizona passed Chapter 86 of the Session Laws of 1921 ratifying, approving and validating the said bonds as authorized, to be issued and sold by the Board of Supervisors of said county at an election by the property taxpayers of said county held December 31, 1920, and that in and by said act the legislature of the State of Arizona declared that the said election "was a valid election and conferred upon the Board of Supervisors of said county the power and authority to issue and sell said bonds and that said bonds when issued and sold by said Board of Supervisors are hereby declared to be free from any defect or invalidity by reason of any act or omission of said Board of Supervisors in calling and holding said election or preparatory thereto;" that said act of the legislature became a law on or about June 14, 1921, and before said bonds were offered for sale.

## XXIV.

That after said bonds were delivered to the said original purchasers thereof as hereinabove set forth

they were sold in the open market to various purchasers and thereafter in reliance upon the said proceedings of the Board of Supervisors of Maricopa County fixing definite maturity dates for said bonds and providing for the payment of interest at the rate specified in said bonds until the due dates therein specified, and in reliance on the act of the legislature of the State of Arizona above set forth ratifying and approving said bonds in the form authorized as above set forth and declaring the same free from any [23] defect, the State Treasurer of the State of Arizona, predecessor in office of defendant, Jim Brush, with the approval of the Governor and Secretary of State, predecessors in office of defendants, Sidney P. Osborn and Dan E. Garvey, respectively purchased Twenty-five Thousand (\$25,000.00) Dollars par value of the bonds last described and paid therefor out of the trust funds in their control, under the provisions of Section 28 of said Enabling Act, in addition to the par value of said bonds a large premium for the right to collect interest on said bonds at the rate specified therein until the respective maturity dates specified in said bonds; that said Twenty-five Thousand (\$25,000.00) Dollars par value of said bonds so purchased were purchased with funds belonging to and were placed in the State Permanent School Fund which is one of the funds of said trust and have so come into the possession of the defendant, Jim Brush, as State Treasurer, and are now so held by him.

## XXV.

That after the issuance and delivery of said last issue of bonds in the year 1921, defendant, Maricopa County, regularly levied and collected taxes for each of the issues of bonds above set forth and made the semi-annual payments of interest out of the interest fund and retired those bonds that became due and payable on their respective due dates and at no time made any claim or assertion of any right to retire any of said bonds before their due dates until the year 1942; that in the year 1942 the Board of Supervisors of said Maricopa County adopted a resolution demanding that the State Loan Commissioners of the State of Arizona issue refunding bonds for the purpose of redeeming and refunding all of the bonds of the two issues above mentioned, including all bonds above described as owned and held in the above described trust, notwithstanding the fact that said bonds were not yet due and payable and contained [24] no provisions for retirement or redemption thereof before their respective due dates; that said Loan Commissioners of the State of Arizona refused to take any proceedings for such refunding, and, thereupon, the said Board of Supervisors of Maricopa County, Arizona, brought a mandamus proceeding in the Supreme Court of the State of Arizona to compel the State Loan Commissioners to refund and redeem said bonds under the provisions of Article 4 of Title 10, of Arizona Code Annotated, 1939, Sections 10-401 to 10-411. That the plaintiff in said mandamus pro-

ceeding was Maricopa County and the defendants therein were Sidney P. Osborn, Governor, Ana Frohmiller, State Auditor, and Joe Hunt, State Treasurer, constituting the Loan Commissioners of the State of Arizona; and that said plaintiff and said defendants were the only parties to said mandamus suit; and that none of the holders of any of the bonds of either of the issues above mentioned were parties to said suit, nor were their interests in any way represented in said suit. The Supreme Court of Arizona, upon the complaint filed by the plaintiff therein and the answer thereto filed by the defendants therein, entered its judgment ordering the said Loan Commissioners to proceed with the refunding of said bonds, and in its opinion stating that said Article 4 of Title 10, Arizona Code Annotated, 1939, was applicable to the redemption and refunding of the two issues of bonds of which the bonds held in the trust hereinabove described are a part; that thereafter and after the first day of January, 1943, the Board of Supervisors of Maricopa County again demanded that the said Loan Commissioners proceed with the refunding of said bonds and said Loan Commissioners thereupon adopted a resolution calling for bids for bonds to refund the whole remainder of the two issues hereinabove described remaining outstanding, including all of the bonds held in trust as hereinabove set forth; that [25] *that* in response to said call for bids only one bid was received and that said Loan Commissioners with the approval of said defendant, Maricopa



County, accepted said bid; and that, thereupon, the said bidder requested a further proceeding in the Supreme Court of Arizona to establish the legal validity of the said refunding bonds and to determine what notice must be given to call the outstanding bonds and stop the payment of interest thereon; that, thereupon, the said Loan Commissioners, with the approval of said Board of Supervisors of Maricopa County, refused to issue said bonds to the purchasers upon the ground that the legality of the same was doubtful and upon the further ground that the bonds to be refunded were not subject to call for redemption before their respective due dates and the same were not yet due; that thereupon said Maricopa County brought a further mandamus proceeding in the Supreme Court of Arizona to compel the State Loan Commissioners to issue and deliver said refunding bonds; that in said last mentioned mandamus proceeding Maricopa County was plaintiff and Sidney P. Osborn, Governor, Ana Frohmiller, State Auditor, and J. D. Brush, State Treasurer, constituting the Loan Commission of the State of Arizona, were defendants; that the parties above named were the only parties to said mandamus suit and none of the holders of any of the bonds proposed to be refunded were parties to or in any way represented in said mandamus suit; that on the 12th day of April, 1943, the Supreme Court of Arizona rendered its judgment in said mandamus suit, which judgment was based wholly on the allegations of the plaintiff's petition

for writ of mandamus, no facts other than those set forth in said writ being placed before the court by the defendants, and in said judgment said Supreme Court of Arizona directed said Loan Commissioners to proceed with said refunding and in its opinion reaffirmed the opinion rendered by it in the former suit [26] of Maricopa County vs. Osborn, et al, 125 P. (2) 703, stating that it was determined in said suit that the bonds of the two issues above mentioned were subject to redemption at any time prior to their fixed maturity dates, notwithstanding the fact that none of these bonds had matured or contained any provision on its face making them redeemable at the option of the county prior to their maturity dates, and further, stating that the bonds of the two issues above mentioned might be called by giving notice as provided for the paying and redemption of territorial warrants of the Territory of Arizona, as set forth in Section 2987 Revised Statutes of the Territory of Arizona of 1887, which was carried into the statutes of 1901 as Section 158 and which provided for calling territorial warrants by advertising in some paper published at the Capital at least two consecutive times, noticing readiness to redeem bonds to the extent of funds on hand and allowing at least thirty days for their presentation; that upon such publication interest on such warrants should cease; that said court in its said opinion stated that the above provision of the Statutes of 1887 remained in force as a part of the provisions of the law for refunding territorial indebtedness,

and that said provisions for refunding territorial indebtedness had been retained in force as a law of the State of Arizona, but it was not called to the attention of said Supreme Court for Arizona nor did said Supreme Court consider the fact that under the territorial law for refunding indebtedness as it stood when the Territory of Arizona became a state, there was no authority whatever to refund any indebtedness except indebtedness incurred prior to January 1st, 1897, and consequently on the theory that the State of Arizona adopted said Territorial Statute there could be no refunding of any indebtedness of any kind incurred after statehood, nor was there called to the attention [27] of said Supreme Court of Arizona, nor considered by said court, Acts 54 and 86 of Arizona Session Laws of 1921, expressly ratifying and approving the issues of bonds held to be callable after the form thereof containing specific due dates had been adopted, nor was there called to the attention of said Supreme Court of Arizona, nor considered by said court Chapter 39 of Arizona Session Laws of 1927 and the subsequent refunding acts of the State of Arizona, nor the relation of the acts for funding and refunding to the acts for the issuance of bonds for state and municipal indebtedness, nor was there set up in said mandamus proceeding, nor called to the attention of the court, that there was presented any question of the impairment of the obligation of the contract created by the issuance of said bonds by the changes in the statute made in the Revised



Code of Arizona for 1928; that apparently all of the parties to said mandamus suit were desirous of reaching the same result and no actual litigation of the rights of the holders of the bonds to be refunded, including the bonds above described held in the trust fund above mentioned, was had in said suits.

## XXVI.

That the defendant, Jim Brush, as Treasurer of the State of Arizona, and the defendants, Sidney P. Osborn and Dan E. Garvey, as Governor and Secretary of the State of Arizona, respectively, assert and declare that they, as officials of the State of Arizona, are bound to abide by the decision of the Supreme Court of said state in the two above mentioned mandamus suits, and that they will surrender the above described Maricopa County Highway bonds held in trust for the schools of said State of Arizona, in deference to said decision of said Supreme Court immediately upon call for the redemption of said bonds being made in the manner declared valid by said Supreme Court of Arizona.

[28]

## XXVII.

That by Section 28 of the Arizona Enabling Act, plaintiff alleges, there is imposed upon the defendants, Jim Brush, as Treasurer, and Sidney P. Osborn and Dan E. Garvey, as Governor and Secretary, respectively, of the State of Arizona, the duty to protect the school funds and other funds derived from the lands donated to the State of

and that said provisions for refunding territorial indebtedness had been retained in force as a law of the State of Arizona, but it was not called to the attention of said Supreme Court for Arizona nor did said Supreme Court consider the fact that under the territorial law for refunding indebtedness as it stood when the Territory of Arizona became a state, there was no authority whatever to refund any indebtedness except indebtedness incurred prior to January 1st, 1897, and consequently on the theory that the State of Arizona adopted said Territorial Statute there could be no refunding of any indebtedness of any kind incurred after statehood, nor was there called to the attention [27] of said Supreme Court of Arizona, nor considered by said court, Acts 54 and 86 of Arizona Session Laws of 1921, expressly ratifying and approving the issues of bonds held to be callable after the form thereof containing specific due dates had been adopted, nor was there called to the attention of said Supreme Court of Arizona, nor considered by said court Chapter 39 of Arizona Session Laws of 1927 and the subsequent refunding acts of the State of Arizona, nor the relation of the acts for funding and refunding to the acts for the issuance of bonds for state and municipal indebtedness, nor was there set up in said mandamus proceeding, nor called to the attention of the court, that there was presented any question of the impairment of the obligation of the contract created by the issuance of said bonds by the changes in the statute made in the Revised

Code of Arizona for 1928; that apparently all of the parties to said mandamus suit were desirous of reaching the same result and no actual litigation of the rights of the holders of the bonds to be refunded, including the bonds above described held in the trust fund above mentioned, was had in said suits.

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[28]

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Arizona by the Federal Government, from loss, impairment or depletion by all lawful means within their power; and that it is the duty of said defendants, under the provisions of said Enabling Act, to resist the unlawful depletion of said trust funds by the above mentioned erroneous decisions of the Supreme Court of Arizona, by resorting to the Federal Courts to prevent the threatened unlawful call and redemption of said bonds, and the consequent depletion of the trust fund thereby; that the surrender of said bonds before their due date with the consequent loss caused thereby to said trust fund in deference to the above mentioned mandamus decisions of the State Supreme Court without submitting said question to the Federal Courts, which are charged with the duty of protecting said trust funds, will constitute a breach of trust by said defendants and entitles the plaintiff, as a citizen of the State of Arizona, to bring an action to restrain the contemplated surrender of said bonds.

### XXVIII.

That notwithstanding the fact that the bid for the bonds proposed to be issued by the State Loan Commissioners for refunding the bonds of the two above mentioned issues is practically par for a  $2\frac{3}{4}\%$  interest rate, the actual difference between the rates of 6% and  $5\frac{1}{4}\%$  carried by the bonds of said issues which are sought to be redeemed, and the current interest rate of like bonds on the present market, is much greater, the current rate of interest

on such bonds being [29] approximately  $2\frac{1}{4}\%$ , the difference in said rate and the rate to which the proposed bonds are awarded to the bidder being due to the fact that there was only one bid, other bond purchasers having refrained from bidding because of the doubt as to the validity of said refunding bonds, arising from the fact that if the bonds proposed to be redeemed remain outstanding, the total indebtedness of said county would greatly exceed the statutory limitation.

## XXIX.

That the said refunding proceedings hereinabove mentioned brought about by the defendant, Maricopa County, is a plan or device in which other counties, municipalities and school districts of the State of Arizona are participating and the purpose of said plan or device is to obtain the redemption of various outstanding issues of bonds held not only by Maricopa County but by other counties, municipalities and school districts in the State of Arizona; and that if said plan or device is successful to the extent of securing the refunding and redemption of the two issues of bonds hereinabove described many other bond issues of counties, municipalities, school districts and other subdivisions of the State of Arizona will be refunded and redeemed by like proceedings through the State Loan Commissioners under the same statutory provisions, and the same decisions of the Supreme Court of Arizona; that some of the municipalities and school districts of Arizona already have taken action looking toward



such refunding and will demand the same of the State Loan Commissioners as soon as the above described Maricopa County Highway bonds are successfully refunded; that the defendant, Jim Brush, as Treasurer of the State of Arizona, holds in the several funds of the trust created by Sections 24 to 28, both inclusive, of the Enabling Act of the State of Arizona, a total of over one million dollars [30] par value of bonds that will be subject to refunding under the above mentioned decisions of the Supreme Court of Arizona; and that the refunding and redemption of such bonds will cause a loss to the several funds of the trusts held by said defendant, Jim Brush, under the Enabling Act, of over one hundred thousand dollars; that some of said bonds are in identically the same legal situation under the above mentioned decisions of the Arizona Supreme Court with reference to the alleged right to refund as said Maricopa County Highway bonds, and others thereof are in a situation different only in the respect that they were issued after July 1, 1929, the date on which the Arizona Revised Code of 1928 took effect, and there has been no change in the statutes of Arizona pertaining to the refunding of such bonds since the issuance thereof, nor have said bonds been ratified and approved by acts of the legislature of the State of Arizona after the form of bond was approved; and that those of said bonds issued after said first day of July, 1929, are not subject to the contention that the legislature of Arizona has passed any law after their issuance im-



pairing the obligation of the contract created by their issuance, but said bonds are subject to the contentions herein made that the statutes of Arizona, neither at the time of the issuance of said bonds, nor at any time since, nor at the present time, authorize the refunding of said bonds and plaintiff herein asserts the right to have that question of interpretation of said statutes of Arizona determined in this suit by reason of the fact that this is a suit brought to protect a trust created under the Enabling Act of the State of Arizona, which is an Act of Congress by which it is made the duty of the Attorney General of the United States to restrain violations of said trust, and any citizen of the State of Arizona is given the same right. [31]

### XXX.

That if the outstanding Maricopa County Highway bonds above described as held in trust by the defendant, Jim Brush, as Treasurer of the State of Arizona, are permitted to be called and the payment of interest thereon to be terminated as of the present date the loss to the trust fund above mentioned caused by such redemption will greatly exceed the sum or value of three thousand dollars; and that if the said refunding will proceed to include other like bonds above mentioned held in said trust fund the loss to the said trust fund caused by such redemption at the present time will greatly exceed the sum of one hundred thousand dollars.

## XXXI.

That the call and redemption of the said Maricopa County Highway bonds in the manner directed, by the above mentioned decisions of the Supreme Court of Arizona will impair the obligation of the contract entered into by the County of Maricopa with the purchasers of the said Maricopa County Highway bonds at the time of the original sale and delivery thereof and will deprive the trust fund in charge of the defendant, Jim Brush, under the terms of the Enabling Act of the State of Arizona of property without due process of law, for the following reasons:

1. That the statute under which the defendants are proceeding to call and redeem said bonds and the only law under which said bonds can be called and redeemed, if at all, is Article 4 of Title 10, Arizona Annotated Code 1939, Sections 10-401 to 10-411, which first became a law of the State of Arizona as Article 4, Chapter 60 of Arizona Revised Code 1928, on the first day of July, 1929, some seven or eight years after the issuance of the above mentioned bonds. Section 2654 of said Article 4, Chapter 60 Arizona Revised Code 1928 reads [32] as follows:

“Sec. 2654. County or municipal bonds by state loan commissioners. The boards of supervisors of the counties and the municipal and school authorities, shall report to the state loan commissioners the bonded and outstanding indebtedness of the county, municipality or school

district, and, upon the demand of said authorities, the commissioners shall provide for the redeeming or refunding of such indebtedness in the same manner as other state indebtedness, and issue bonds of the state for any indebtedness allowed by law to be incurred by such county, municipality or school district. Such bonds shall be issued upon the faith and credit of the state only to the extent that it will cause to be levied and collected taxes for the payment of the principal and interest for such bonds, and pay the same when such bonds have been issued. The county, municipality, or school district shall pay into the state treasury, in addition to all other taxes authorized by law, such amounts as may be directed by the state board of equalization, or on their failure by the state auditor, to be levied for the payment of the principal and interest of such bonds issued for such county, municipality, or school district, in the same manner as is herein provided for the payment of the principal and interest of state indebtedness.”

That the above section provides that the Loan Commissioners upon demand of the board of supervisors “shall provide for the redeeming or refunding of such indebtedness in the same manner as other state indebtedness and issue bonds of the state for any indebtedness allowed by law to be incurred by such county, municipality or school district.”

The provision for refunding of state indebtedness referred to in said section is found in Section 2646 of said Article 4, which provides that the Loan Commissioners "shall provide for the payment of the state indebtedness due and to become due, now existing or hereafter authorized for the purpose of paying, redeeming and refunding all or any part of the principal and interest of the same from time to time, issue negotiable coupon bonds of the state when they can be issued at a lower rate of interest than previously paid, or when to the profit and benefit of the state;" that the defendant, Maricopa County, contends that [33] the bonds held in the trust hereinabove described and other like bonds may be redeemed and refunded under the provisions of Sections 2654 and 2646, without impairing the obligation of any contract between said Maricopa County and the holders of said bonds, for the reason that a similar right for the redemption and refunding of said bonds existed at the time of the issuance of said bonds under the provisions of Chapter I of Title 52, Sections 5251 and 5265 of Revised Statutes of Arizona, 1913, which were in force when said bonds of the plaintiffs were issued; that said contention of defendant, Maricopa County, is not well founded for the following reasons:

1. If there existed any right to redeem either of the bond issues above mentioned by virtue of any statute or law in force when said bonds were issued such right of redemption was excluded from application to said bond issues and each of them by

the Acts of the Legislature, (Chapters 54 and 86, Session Laws of 1921) approving and ratifying said bonds after the form of the bonds had been adopted and the covenants therein to pay the interest to definite maturity dates had become effective and made a matter of public record.

2. Chapter 1 of Title 52, Arizona Revised Statutes of 1913, in so far as is material in this connection, was a reenactment of Chapter 29 Arizona Session Laws of 1912, First Special Session, and said Chapter 29 of Arizona Session Laws of 1912, First Special Session, was a reenactment of the Act of Congress of June 25, 1890, Chapter 614, 51 Congress, First Session, as amended by the Act of Congress of August 3, 1894, Chapter 200, 53d Congress, Second Session, and further amended by Act of Congress of June 6, 1896, 29 Stat. 262, and that under the first of the above mentioned acts the refunding of county indebtedness was limited to indebtedness incurred prior [34] to December 31st, 1890, subject to the provision that said indebtedness might be validated or allowed after said date and that by the second of the above mentioned acts the county indebtedness permitted to be refunded was extended to include all indebtedness incurred prior to December 31, 1895, and that by the third of the above mentioned acts the final limit of county indebtedness to be refunded was extended to the first day of January, 1897, and that after said date no refunding of county indebtedness could be made under either of said acts, and that said acts by



virtue of the constitution of Arizona became the law of the State of Arizona upon said Territory of Arizona becoming a state and was reenacted without change in this respect by Chapter 29 of the Session Laws of 1912, First Special Session, and was again reenacted by Chapter I of Title 52 of Arizona Revised Statutes 1913, which was in force at the time of the issuance of the bonds held in the trust herein described; and that it was not until the Arizona Revised Code of 1928 became a law that said statute was amended or attempted to be amended so as to authorize the refunding of county and municipal indebtedness by the State Loan Commissioners by changing the intent and meaning of said statute; that the changes in said 1928 Code which made the provisions of said statute legally applicable to county and municipal indebtedness, if in fact they ever were so made applicable, consisted in changing the words "and they shall issue bonds for any indebtedness now allowed or that may be hereafter allowed by law to said county, municipal or school districts upon official demand of said authorities", to read: "The commissioners shall provide for the redeeming or refunding of such indebtedness in the same manner as other state indebtedness and issue bonds of the state for any indebtedness allowed by law to be incurred by such county, municipal or school district," and by providing [35] that such bonds "shall be issued upon the faith and credit of the state only to the extent that it will cause to be levied and collected taxes for



the payment of principal and interest of such bonds and pay the same when such bonds have been issued," and by eliminating the section in said Act requiring the state to pay the interest on said bonds out of the general fund if there was not sufficient money in the special fund, and by changing other provisions of said statute so that the state would be obligated to pay said bonds.

3. That the provision in Section 5260 in Chapter I, of Title 52, Revised Statutes of 1913, providing for funding and refunding, which defendants claim authorized the refunding of the bonds owned by the plaintiffs, at the time when the same were issued by the defendant, Maricopa County, was adopted, together with other provisions for refunding as a part of the reenactment of the Act of Congress of June 25, 1890, Chapter 614, 51st Congress, First Session, which was a part of the law of the Territory of Arizona before it became a state, and which by virtue of Section 2, Article XXII of the Constitution of Arizona, became a law of the state of Arizona in so far as the same was not inconsistent with the Constitution of Arizona, but any provision inconsistent with said Constitution did not become a law of said state; that said provision as it existed in said Act of Congress of June 25, 1890, made all indebtedness refunded under said provision indebtedness of the Territory of Arizona, and expressly obligated the Territory of Arizona to pay said bonds even though it did not collect the necessary taxes from the county to pay the same, (Par.

2047, page 106, Ariz. Revised Stat. 1901), and further expressly obligated the territory to pay the interest on said bonds out of the special fund collected from the county for the purpose and if said fund was not sufficient then to pay the same out of the [36] general fund of said territory, (Par. 2050, page 109, Ariz. Revised Stat. 1901), by Section 2 of Article XXII of the Constitution of Arizona when Arizona became a state the word, "state" was substituted for the word "territory" so that said obligation to pay said bonds was imposed upon the State of Arizona, but that said provision was in conflict with Section 5 of Article IX of the State Constitution which limited the indebtedness of the state to \$350,000.00 and expressly prohibited the creation of any indebtedness by the state for the purpose contemplated by said provision; and that said provision of Section 5260 Revised Code of 1913, if given the interpretation claimed by defendants, was likewise in violation of said section of the Constitution of the State of Arizona, and therefore, of no force and effect whatever; that for the reasons aforesaid, no bonds refunding county bonds could have been issued under Chapter I, Title 52 of the Revised Statutes of 1913, or any other law of the State of Arizona, prior to the enactment of Article 4, Chapter 60 of the 1928 Revised Code of Arizona, in which it was provided that the state should not be liable for county bonds refunded by the State Loan Commissioners.

## XXXII.

That there can be no refunding of the above described bonds held in the above described trust under the provisions of Article 4, Chapter 10, of Arizona Annotated Code, 1939, which is the law that has superseded Article 4 of Chapter 60 of Arizona Revised Code of 1928, and is the law under which defendant, Maricopa County, claims the right to refund and redeem said bonds, for the reason that there is no effective provision for calling the bonds to be redeemed. The provision that may have been intended for said purpose is found in Section 10-406, Arizona Annotated Code of 1939, which provides that, "The treasurer shall give notice as for the payment and redemption of state [37] warrants of his readiness to redeem such indebtedness and thereafter interest on all such indebtedness due and outstanding shall cease." That there is not now and there never has been any provision of the law in the State of Arizona for giving notice for the payment and redemption of state warrants and that said Section 10-406 Arizona Annotated Code, 1939, and its predecessor, Section 2651, Revised Code of 1928, were wholly meaningless and ineffective; that the Supreme Court of Arizona in the decision in the mandamus suit made on April 11, 1943, stated that the notice prescribed for the redemption of territorial warrants by Section 2987 of the Revised Statutes of Arizona for 1887 was incorporated into the Arizona Territorial Statutes of 1901 and so

continued in all revisions of said territorial funding and refunding act down to the present time; but said Supreme Court of Arizona overlooked the fact that if the Acts of Congress providing for territorial funding and refunding had been carried into the laws of the state with all their incidents, notwithstanding that the acts creating such incidents have been repealed or have not been continued in the various statutes and codes of the State of Arizona adopted since statehood then said funding and refunding act has at no time been effective for the purpose of refunding any indebtedness since statehood, for the reason that it was not so effective when the Constitution of Arizona was adopted, by reason of the fact that no indebtedness created after January 1, 1897 could be refunded thereunder and further by reason of the fact that it was expressly rendered invalid by the limitation of indebtedness provided by the Constitution of the State of Arizona and the further fact that the legislature of the State of Arizona has recognized the fact that said provisions for funding and refunding are not in force by adopting a funding and refunding act applicable only to bonds when due or optional. [38]

### XXXIII.

That the provisions of Chapter 2, Title LII of Arizona Revised Statutes of 1913, being Sections 5266-5285 of said statutes, prescribe a complete procedure for the issuance and sale of county and municipal bonds; that Section 5273 of said chapter

expressly requires that the order for election shall fix and state the date of maturity of said bonds, that Section 5274 expressly provides that said bonds shall be payable at a date not to exceed forty years from the date of their issuance. Section 5278 of said chapter expressly provides that the interest on said bonds shall be paid out of the tax levy provided for that purpose until said bonds are redeemed, and Section 5279 of said chapter expressly provides for a sinking fund to be created for the redemption of said bonds when the same shall mature, and Section 5281 of said chapter expressly provides that said bonds shall be called when they mature by notice for four weeks in some newspaper published in the county in which such bonds have been issued; that all of the aforesaid provisions are inconsistent with the interpretation of the provision in Chapter 1 of the same title, under which defendant, Maricopa County, claims the right to refund said bonds before maturity; that said two chapters were both enacted by the First Legislature of the State of Arizona, and were both inserted in the 1913 Code by the same legislature, and that said sections must be construed together and the provisions in Chapter 1 must be so construed as not to conflict with the provisions of said Chapter 2, and so construed the bonds under said Chapter 2 are refundable and redeemable only with the consent of the holders or when they have become optional under the terms of said bonds. That if there is any inconsistency between said Chapter 1 and Chapter 2, Title LII, the



provisions of said Chapter 2 must prevail for the reason that Chapter 1, by its enactment by Congress, [39] became a law of the Territory of Arizona, and by virtue of Section 2 of Article XXII of the Arizona Constitution, became a law of the State of Arizona upon Arizona becoming a state, and was such law when the first legislature of Arizona originally enacted said Chapter 2, (Chap. 29, Session Laws of 1912, Regular Session), hence, said Chapter 2, being the later enactment, repealed any inconsistent provision of said Chapter 1 by implication as well as by the express repeal provision contained in said Chapter 29, Session Laws of 1912.

#### XXXIV.

That if the provisions of Section 5260 Revised Statutes of 1913 were ever susceptible of an interpretation permitting the call for redemption of bonds when issued under Chapter 2, Title 52, Revised Statutes of 1913, such interpretation is conclusively precluded by the several refunding acts passed by the legislature of the State of Arizona after the issuance of the bonds owned and held by the plaintiffs in this case. By Chapter 39 of the Session Laws of 1927, county, municipal and school district bonds are authorized to be refunded upon certain conditions when and only when such indebtedness has "become payable at the option of such county, school district or municipality," and by Section 2668 of the Revised Code of 1928, such bonds are made refundable only upon certain con-



ditions. Likewise, by Chapter 32 Session Laws of 1933, such bonds are refundable only upon certain conditions and by Section 10-612 Arizona Annotated Code, 1939, said bonds are refundable only upon certain conditions; that the refunding proposed by defendants in this case does not comply with the conditions stated in any of said acts.

### XXXV.

That the attempt of the defendant, Maricopa County, to deprive the holders of its Highway Bonds of the rate of interest [40] specified in the bonds held by them for the remainder of the term of said bonds, is an unlawful attempt to deprive said holders of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States; that the alleged right to call said bonds under the provisions of Article 4 of Chapter 10 of the Arizona Annotated Code of 1939, is contrary to the recognized interpretation of said statute from the time of its origin in the Act of Congress June 25, 1890, Chapter 614, 51st Congress, First Session; that said Act of Congress applied only to indebtedness existing at the date of said enactment which had been allowed or validated or might be allowed or validated after the passage of said act, the time for the allowance and validation of said indebtedness being extended by Act of Congress August 3, 1894, Chapter 200, 54th Congress, Second Session, and further extended by Act of Congress of June 6, 1896, 29 Stat. 262, the

last extension limiting the indebtedness to be refunded thereunder to the first day of January, 1897; that said acts were interpreted by several decisions of the court of the Territory of Arizona and the Supreme Court of the United States; and that under said decisions there could be no refunding under said act of county indebtedness incurred after January 1, 1897; that the provisions of said Act of Congress of June 25, 1890, were merely incorporated without change in the statutes adopted by the First Legislature of the State of Arizona and inserted in Chapter 1, Title LII of the Revised Code of 1913; that from the date of Statehood of Arizona, in 1912, to July 1, 1929, when the Revised Code of 1928 became effective, bonds issued under Chapter 1, Title LII, Revised Code of 1913, clearly became direct obligations of the State of Arizona and could not be issued because prohibited by Section 5 of Article 9 of the State Constitution; that the bonds which defendants [41] seek to refund in this case were issued under Chapter 2, Title LII, Revised Statutes of 1913, which contains provisions prescribing a complete procedure for the issuance of such bonds and provisions expressly requiring said bonds to be issued with definite maturity dates, and the interest to be paid until such maturity dates, a sinking fund to be created for the payment of the bonds at maturity, and for redemption of the bonds only after maturity. That the said provisions of Chapter 2, Title LII are wholly inconsistent with any right to call bonds issued under Chapter 2 that

may be implied from Chapter 1 of said Title LII, and said Chapter 1 becoming a statute of the State upon statehood, and said Chapter 2 being enacted by the legislature, and containing an express repeal provision, necessarily prevailed over said Section 1. That said bonds in the form in which they were issued were expressly ratified, approved and declared free from defects by the legislature of the State of Arizona before they were purchased at a premium for the trust fund, in reliance upon the express provisions of the statutes of the state; that at no time from statehood in the year 1912, until the year 1942, was there any suggestion by any public official of the County of Maricopa, or of the State of Arizona, that such bonds were callable for redemption before their maturity dates; that defendant, Maricopa County, has received and beneficially expended the money paid by the purchasers of said bonds upon the representation that said bonds would continue to bear the rate of interest therein specified until their due dates, now seeks to call said bonds for redemption in order that it may receive the benefit of the lower interest rates now existing; that there was paid out of the said trust moneys a large premium for the bonds purchased therefor, in good faith, in reliance upon the public acts of the Board of Supervisors of Maricopa County, as [42] the same appeared of record and upon the acts of the legislature of the State of Arizona, duly enacted, and that to deprive said trust fund of the right under the circumstances stated to

receive the specified rate of interest on said bonds for which a large premium was paid is to deprive the same of property without due process of law.

### XXXVI.

That the plaintiff alleges that the facts herein set forth and, particularly, the fact that all bonds that have been issued by the counties, municipalities, school districts and other subdivisions of the State of Arizona from the beginning of statehood to the present time have specified definite maturity dates, in some cases with an express provision for call and redemption after a period of years, and in other cases without such provision, and have contained covenants by which the issuer of the bonds agreed to pay the interest at a specified rate according to coupons attached thereto until the maturity dates thereof; and that all public officers of the State of Arizona and the several counties thereof and the municipalities and school districts thereof have at all times construed the laws of the State of Arizona as requiring the issuance of bonds with definite maturity dates and in those cases where the bonds were to be approved by the taxpayers, as requiring the submission of definite maturity dates to said taxpayers, and said construction so uniformly placed upon the statutes of the state has been accepted and approved by the legislature of the state by expressly recognizing that bonds issued in such form are valid and enforceable according to their terms, and by expressly providing that due or op-

tional bonds only shall be subject to redemption, and by recognizing the right of counties, municipalities, school districts and other legal subdivisions to create and hold sinking funds and invest such sinking funds at a far less [43] rate of interest than their outstanding bonds, and the fact that said officials and the legislature of the State of Arizona have urged the purchase of numerous bonds of the counties, municipalities, school districts and other legal subdivisions of the state at substantial premiums, which purchase, if said bonds were callable at any time, constituted a gross fraud upon the purchasers and as to the State Treasurer and other state officers purchasing such bonds for the trust funds created by the Enabling Act, constituted a breach of trust, estopp the State of Arizona and all the counties, municipalities and school districts thereof from now asserting any right to redeem any of their said bonds contrary to the express terms of said bonds, and to permit the redemption of such bonds in the manner now sought by the defendant, Maricopa County, would operate as a fraud upon the holders of said bonds, and constitute a fraudulent diversion of trust monies derived from the lands donated to the state under the provisions of the Enabling Act.

### XXXVII.

That the decisions of the Supreme Court of the State of Arizona made in the mandamus suits above referred to are not binding upon the Federal Courts for the following reasons:



1. That the interests of the bondholders holding any of said bonds were not represented before the court at either of said mandamus proceedings.

2. That the rights of the bondholders could not be litigated in said mandamus proceedings for the reason that under Section 4 of Article 6 of the State Constitution, the Supreme Court of Arizona has only limited jurisdiction in original mandamus proceedings against state officers.

3. That the issues of fact and law presented in this complaint have not been presented to the Supreme Court of the [44] State of Arizona in either of said mandamus proceedings and that said Supreme Court has in effect not passed upon said issues for the reason that the facts creating said issues have not been called to the attention of said court.

4. That any opinion that may have been expressed by the Supreme Court of Arizona that may have any bearing upon any of the issues presented in this complaint, is not binding upon the Federal Courts first, because the jurisdiction of the Federal Courts in this case is based upon Federal questions in which said courts must follow their own independent judgments, second, most of the issues presented by the complaint arise from the interpretation of an Act of Congress asserted by the Supreme Court of Arizona to have been incorporated into the state laws and the interpretation of said act is primarily a question for the Federal Courts, third, the case presents questions of estoppel against a state and its subdivisions and fourth, the case is a



case to prevent the officials of the state from depleting the trust fund held under the Enabling Act in violation of said act and the purpose of said act is to restrain all officials of the state, including the state judiciary from violating the terms of said act.

### XXXVIII.

That this action is brought under the provisions of the Declaratory Judgment Act, being 28 U. S. Code Annotated, Section 400. Plaintiff alleges that he has the right under the Enabling Act to bring an action to enjoin defendants from committing the breach of trust herein alleged as about to be committed; that the defendants, Jim Brush, Sidney P. Osborn and Dan E. Garvey, as responsible officials of the State of Arizona, will probably respect the law as declared by this court without an actual issuance of an injunction; that the plaintiff has the right at all events under the Enabling Act [45] and the Declaratory Judgment Act above referred to, to have a determination of the alleged right to call the bonds held in said trust fund and to enjoin the depletion of said trust funds, if injunction be found necessary to restrain said defendants.

Wherefore, plaintiff prays that an adjudication may be made that defendant, Maricopa County, has no right to call the said Maricopa County Highway bonds now in the custody of the defendant, Jim Brush, as a part of the trust fund under the Enabling Act of the State of Arizona; and that it be adjudged, decreed and declared that said trust fund is entitled to have paid into it the rate of interest

specified in said bonds until the original due dates of said bonds, including the bonds of the issues other than the Maricopa County Highway bonds held in said trust; and that plaintiff be awarded such further relief as the court may deem proper and his costs.

GUST, ROSENFELD, DIVELBESS,  
ROBINETTE & COOLIDGE,  
201 Professional Building,  
Phoenix, Arizona,

By J. L. GUST

Attorneys for Plaintiff [46]

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EXHIBIT A

\$1000.00

United States of America  
State of Arizona  
County of Maricopa  
Highway Bond  
Election of May 17, 1919

No.....

No.....

The County of Maricopa, State of Arizona, for value received, hereby acknowledges itself indebted and promises to pay to the bearer hereof, on the 15th day of June A. D. 19....., the sum of One Thousand Dollars (\$1000.00) in gold coin of the United States, with interest hereon from date hereof in like gold coin at the rate of five and one-half per centum per annum, payable semi-annually on the 15th day of June and the 15th day of December of each year,

on presentation and surrender of the interest coupons hereto attached. Both principal and interest aforesaid shall be payable at the office of the Treasurer of the County of Maricopa, State of Arizona.

This bond is one of a series of four thousand bonds of the same date and tenor, except as to maturity, numbered respectively from 1 to 4,000, inclusive, and amounting in the aggregate to four million dollars (\$4,000,000.00).

This bond is issued by the Board of Supervisors of said County of Maricopa, for the purpose of constructing and improving public highways within and for the said County of Maricopa, pursuant to and in strict compliance with the Constitution of the State of Arizona, and the statutes thereof, including among others Chapter II of Title LII of the Revised Statutes of Arizona, 1913, Civil Code, and Chapter 3, of the Session Laws, Regular Session, 1917, and acts amendatory thereof and supplementary thereto, and in pursuance of a resolution of said Board of Supervisors duly adopted on the 31st day of March, 1919, and the report duly made by the Highway Commission for said county of Maricopa to said Board of Supervisors on the 10th day of April, 1919, and a resolution by said Board of Supervisors duly adopted upon receipt of said report and on said 10th day of April, 1919, and with the assent of a majority of the property taxpayers who were then qualified electors of said county voting at a special election legally called and duly held on the 17th day of May, 1919, for the purpose

of determining whether the above-mentioned series of bonds should be issued.

It is hereby certified, recited and declared that all acts, conditions and things, required to be performed, to exist and to happen, precedent to and in the issuance of this bond, have been performed, have existed and have happened in due time, form and manner, as required by law, and that the bonded and other indebtedness of said county, including this bond and all other bonds of the above-mentioned series, does not exceed ten per centum of the taxable property of said county as shown by the last assessment roll thereof. [47]

The full faith, credit and resources of the said County of Maricopa are hereby irrevocably pledged for the punctual payment of the principal and interest of this bond.

In Witness Whereof the said County of Maricopa by its Board of Supervisors has caused this bond to be signed by the Chairman and attested by the Clerk of said Board of Supervisors and the seal of the said Board of Supervisors to be hereunto affixed this 15th day of June, 1919.

W. K. BOWEN

Chairman of the Board of Supervisors  
of the County of Maricopa, State of  
Arizona.

Attest:

CLARENCE L. STANDAGE

Clerk of the Board of Supervisors  
of the County of Maricopa, State  
of Arizona.

2. That each of the said series of four thousand (4,000) bonds shall have attached thereto such number of semi-annual interest coupons in the sum of twenty-seven dollars and fifty cents (\$27.50) each, and payable on the 15th day of June and the 15th day of December of each year during the term of said bond, as shall be sufficient to evidence all the interest to become due on said bond during the term thereof; and the form of each of said interest coupons is hereby prepared and fixed as follows, to-wit:

The County of Maricopa, State of Arizona, hereby promises to pay to the holder hereof on the 15th day of ....., 19....., at the office of the County Treasurer of the County of Maricopa, State of Arizona, twenty-seven dollars and fifty cents in gold coin of the United States, for the semi-annual interest on its highway bond numbered.....

Election of May 17, 1919.

W. K. BOWEN

Chairman of the Board of Supervisors  
of Maricopa County, State of Arizona.

Attest:

CLARENCE L. STANDAGE

Clerk of the Board of Supervisors of  
Maricopa County, State of Arizona.

\$27.50

Coupon Number.....

3. That the following form for registration shall be printed on the back of each of said bonds as many times as space will reasonably permit, to-wit:

This bond is registered pursuant to the statutes in such case made and provided in the name of ....., and the interest and principal thereof are hereby payable to such owner.

.....  
State Auditor [48]

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EXHIBIT B

\$1000.00

United States of America

State of Arizona

County of Maricopa

Highway Bond

Election of December 31, 1920

No.....

No.....

The County of Maricopa, State of Arizona, for value received, hereby acknowledges itself indebted and promises to pay to the bearer hereof, on the 15th day of January, A. D., 19....., the sum of One Thousand Dollars (\$1000.00) in gold coin of the United States, with interest hereon from date hereof in like gold coin at the rate of six per centum per annum, payable semi-annually on the 15th day of January and the 15th day of July of each year, on presentation and surrender of the interest coupons hereto attached. Both principal and interest afore-said shall be payable at the office of the Treasurer of the County of Maricopa, State of Arizona, or at ..... in the City of New York.

This bond is one of a series of four thousand five hundred bonds of the same date and tenor except



as to maturity, numbered respectively from four thousand one (4,001) to eight thousand five hundred (8,500) inclusive, and amounting in the aggregate to Four Million Five Hundred Thousand Dollars (\$4,500,000.00).

This bond is issued by the Board of Supervisors of said County of Maricopa, for the purpose of constructing and improving public highways within and for the said County of Maricopa, pursuant to and in strict compliance with the Constitution of the State of Arizona, and the statutes thereof, including among others Chapter II of Title LII of the Revised Statutes of Arizona, 1913, Civil Code, and Chapter 31 of the Session Laws of Arizona, Regular Session, 1917, and acts amendatory thereof and supplementary thereto, and in pursuance of a resolution of said Board of Supervisors duly adopted on the 16th day of August, 1920, and the report duly made by the Highway Commission for said County of Maricopa to said Board of Supervisors on the 16th day of August, 1920 and a resolution by said Board of Supervisors duly adopted upon receipt of said report and on said 16th day of August, 1920, and with the assent of a majority of the property taxpayers who were then qualified electors of said county voting at a special election legally called and duly held on the 31st day of December, 1920, for the purpose of determining whether the above-mentioned series of bonds should be issued.

This bond is of the issue which was validated by

Act of Legislature of State of Arizona in its Regular Session, 1921, by passage of Senate Bill No. 160, which was approved March 14th, 1921.

It is hereby certified, recited and declared that all acts, conditions and things, required to be performed, to exist and to happen, precedent to and in the issuance of this bond, have been performed, have existed and have happened in due time, form and manner as required by law, and that the bonded and [49] other indebtedness of said county, including this bond and all other bonds of the above-mentioned series, does not exceed ten per centum of the taxable property of said county as shown by the last assessment roll thereof.

The full faith, credit and resources of the said County of Maricopa, are hereby irrevocably pledged for the punctual payment of the principal and interest of this bond.

In Witness Whereof the said County of Maricopa by its Board of Supervisors has caused this bond to be signed by the Chairman and attested by the Clerk of said Board of Supervisors, and the seal of the said Board of Supervisors to be hereunto affixed this 15th day of January, 1921.

GUY F. VERNON

Chairman of the Board of Supervisors,  
of the County of Maricopa, State of  
Arizona.

Attest:

-----  
Clerk, of the Board of Supervisors,  
of the County of Maricopa, State  
of Arizona.

2. That each of the said series of four thousand five hundred (4,500) bonds shall have attached thereto such number of semi-annual interest coupons in the sum of Thirty Dollars (\$30.00) each, and payable on the 15th day of January and the 15th day of July of each year during the term of said bond, as shall be sufficient to evidence all the interest to become due on said bond during the term thereof; and the form of each of said interest coupons is hereby prepared and fixed as follows, to-wit: (Except changes as to date of payments):

“The County of Maricopa, State of Arizona, hereby promises to pay to the holder hereof on the 15th day of January, 19....., at the office of the County Treasurer of the County of Maricopa, State of Arizona, Thirty Dollars (\$30.00) in gold coin of the United States, for the semi-annual interest on its highway bond numbered.....

Election of December 31st, 1920.

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Chairman of the Board of Supervisors  
of Maricopa County, State of Arizona.”

Attest:

---

Clerk of the Board of Supervisors  
of Maricopa County, State of Arizona.

\$30.00

Coupon Number.....

3. That the following form for registration shall be printed on the back of each of said bonds as many times as space will reasonably permit, to-wit:

[50]

.....19.....

This bond is registered pursuant to the statutes in such case made and provided and in the name of ....., and the interest and principal thereof are hereafter payable to such owner.

.....  
State Auditor

[Endorsed]: Filed Apr. 16, 1943. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Ruby A. Ballard, Deputy Clerk. [51]

—————  
[Title of District Court and Cause.]

## ANSWER OF DEFENDANTS

Come now the defendants Jim Brush, State Treasurer of the State of Arizona, Sidney P. Osborn, Governor of the State of Arizona, Dan E. Garvey, Secretary of State of the State of Arizona, Maricopa County, John A. Foote, Ed Oglesby and Phil Isley, constituting the Board of Supervisors of Maricopa County, Arizona, and for answer to the

complaint of plaintiff on file herein, admit, allege, and deny as follows:

## FIRST DEFENSE

### I.

The complaint fails to state a claim against defendants upon which relief can be granted.

## SECOND DEFENSE

### I.

For answer to paragraph I of plaintiff's complaint, defendants allege that they do not have knowledge or information sufficient to admit that plaintiff is a citizen, a resident and taxpayer of the State of Arizona, and for the lack of such information deny [52] the same. Defendants further deny that plaintiff has the right to enforce the trusts created by Sections 24, 25, 26, 27 and 28 of the Enabling Act (Act of Congress approved June 20, 1910) admitting the State of Arizona into the Union of States.

### II.

Defendants admit the allegations of paragraph II of plaintiff's complaint.

### III.

Defendants deny the allegations of paragraph III of plaintiff's complaint.

### IV.

For answer to paragraph IV of the plaintiff's complaint, defendants deny that the difference be-

tween the interest rates upon the bonds therein referred to authorizes plaintiff herein to maintain this action, but allege that neither the Constitution of the United States nor the laws of Congress confer jurisdiction upon this court to entertain this action by plaintiff in the capacity by which he sues. Defendants admit the remaining allegations of said paragraph IV of plaintiff's complaint describing the issues of bonds therein pleaded, but allege that outstanding Maricopa County Highway Bonds are redeemable by the Loan Commissioners of the State of Arizona prior to their maturity dates, as provided by Chapter 1, Title 52, Revised Statutes of Arizona, 1913, and the decisions of the Supreme Court of Arizona construing said chapter entitled: *Maricopa County vs. Osborn, et al.*, ..... *Ariz.* ..... 125 *Pac.* (2d) 703, and *Maricopa County vs. Osborn, et al.*, ..... *Ariz.* ..... 136 *Pac.* (2d) 270 (*Pacific Reporter Advance Sheets*, May 14, 1943, Vol. 1, p. 270).

#### V.

Defendants admit the allegations of paragraph V of plaintiff's complaint. [53]

#### VI.

For answer to paragraph VI of plaintiff's complaint, defendants admit the enactment of Chapter 2, Title 52, Revised Statutes of Arizona, 1913, but allege that said outstanding Maricopa County Highway Bonds are redeemable prior to their maturity dates as provided by Chapter 1, Title 52, Revised



Statutes of Arizona, 1913, and the decisions of the Supreme Court of Arizona construing said chapter, as aforesaid. Defendants deny each and every remaining allegation contained in said paragraph VI of plaintiff's complaint.

#### VII.

Defendants admit the allegations of paragraphs VII, VIII, IX, and X of plaintiff's complaint.

#### VIII.

For answer to paragraph XI of plaintiff's complaint, defendants allege that notwithstanding the recitals contained in said bonds, or the coupons attached thereto, said bonds are redeemable prior to their maturity dates as provided by Chapter 1, Title 52, Revised Statutes of Arizona, 1913, and the decisions of the Supreme Court of Arizona, as aforesaid.

#### IX.

Defendants admit the allegations of paragraphs XII, XIII, XIV and XV of plaintiff's complaint.

#### X.

For answer to paragraph XVI of plaintiff's complaint defendants admit that said Maricopa County Highway Bonds were sold in the open market to various purchasers thereof, but defendants allege that notwithstanding the sale and purchase of said bonds, as in said paragraph alleged, said bonds are redeemable prior to their maturity dates as provided by Chapter 1, Title 52, Revised Statutes of

Arizona, 1913, and the decisions of the Supreme Court [54] of Arizona construing said chapter, as aforesaid.

### XI.

Defendants admit the allegations of paragraphs XVII, XVIII, and XIX of plaintiff's complaint.

### XII.

For answer to paragraph XX of plaintiff's complaint, defendants allege that notwithstanding the recitals contained in said bonds, or the coupons attached thereto, said bonds are redeemable prior to their maturity dates as provided by Chapter 1, Title 52, Revised Statutes of Arizona, 1913, and the decisions of the Supreme Court of Arizona construing said chapter, as aforesaid.

### XIII.

Defendants admit the allegations of paragraphs XXI, XXII, and XXIII of plaintiff's complaint.

### XIV.

For answer to paragraph XXIV of plaintiff's complaint, defendants admit that said Maricopa County Highway Bonds were sold in the open market to various purchasers thereof, but these defendants allege that notwithstanding the sale and purchase of said bonds, as in said paragraph alleged, said bonds are redeemable prior to their maturity dates as provided by Chapter 1, Title 52, Revised Statutes of Arizona, 1913, and the decisions of the Supreme Court of Arizona, as afore-

said. For further answer to said paragraph XXIV of plaintiff's complaint, defendants allege that at the time said Maricopa County Highway Bonds were purchased by the State Treasurer of the State of Arizona, with the approval of the Governor and Secretary of State of Arizona, said Chapter 1, Title 52, Revised Statutes of Arizona, 1913, was in full force and effect as a law of the State of Arizona, and that at the time said Maricopa County Highway Bonds were authorized, issued and sold, said Chapter 1, [55] Title 52, Revised Statutes of Arizona, 1913, became a part of said bonds, and a part of said contract between Maricopa County and the purchasers of said bonds whereby said bonds were sold and delivered to the purchasers thereof, and that by reason thereof said Maricopa County Highway Bonds have been, from the date of their issue, and now are, subject to redemption prior to their maturity dates, as provided by said Chapter 1, Title 52, Revised Statutes of Arizona, 1913, and the decisions of the Supreme Court of Arizona construing said chapter, as aforesaid.

## XV.

For answer to paragraph XXV of plaintiff's complaint, defendants admit that Maricopa County levied and collected taxes to retire the principal and interest of said Maricopa County Highway Bonds therein described as the same became due and payable, and further admit that in the year 1942, the Board of Supervisors of Maricopa County adopted a resolution demanding that the Loan

Commissioners of the State of Arizona issue bonds for the purpose of refunding said Maricopa County Highway Bonds then outstanding, and further admit that Maricopa County brought an original proceeding in mandamus in the Supreme Court of the State of Arizona to compel the Loan Commissioners of the State of Arizona to refund said outstanding Maricopa County Highway Bonds, and admit that the Supreme Court of the State of Arizona, in said proceeding, entered judgment commanding the Loan Commissioners of the State of Arizona to refund and call said outstanding Maricopa County Highway Bonds, but deny that the Supreme Court of the State of Arizona held that said Maricopa County Highway Bonds were refundable under the provisions of Article 4 of Title 10, Arizona Code Annotated, 1939, but in this respect allege that both of the decisions of the Supreme Court of the State of Arizona, as aforesaid, [56] held that said Maricopa County Highway Bonds were refundable under the provisions of Chapter 1, Title 52, Revised Statutes of Arizona, 1913. Defendants allege that J. L. Gust, attorney for plaintiff in this cause of action, appeared in said mandamus proceeding in the Supreme Court of the State of Arizona as counsel for the owner and holder of some of said Maricopa County Highway Bonds and while ostensibly appearing in said mandamus proceeding as a friend of the court, nevertheless in fact represented said bondholder, and in said mandamus proceeding was entitled to, and could have

presented and raised all the issues the said J. L. Gust now raises as counsel for plaintiff herein. That a copy of the brief filed in the Supreme Court of the State of Arizona in said original mandamus proceeding by the said J. L. Gust, as attorney for said bondholder, is attached to the affidavit of Leslie C. Hardy filed herein contemporaneously with this answer and marked "Exhibit C", and by reference herein incorporated as if made a part hereof. Defendants deny each and every remaining allegation in said paragraph XXV of plaintiff's complaint.

#### XVI.

Defendants admit the allegations of paragraph XXVI of plaintiff's complaint.

#### XVII.

For answer to paragraph XXVII of plaintiff's complaint, defendants admit that a duty is imposed by law upon the defendants Jim Brush, as Treasurer of the State of Arizona, and Sidney P. Osborn and Dan E. Garvey, as Governor and Secretary, respectively, of the State of Arizona, to conserve and protect funds of the State of Arizona derived from lands donated to said state by the federal government, but defendants deny that said officials of the State of Arizona are failing to protect and conserve said funds [57] and particularly such of said funds as have been invested in said Maricopa County Highway Bonds. Defendants allege that the laws of the State of Arizona, as con-



strued by the Supreme Court of said state, as aforesaid, authorized the refunding of said Maricopa County Highway Bonds by the Loan Commissioners of the State of Arizona from the date of their issue, and that the refunding of said outstanding Maricopa County Highway Bonds proceeds from the authority of the State of Arizona, the fulfillment of which is an obligation resting upon the Governor, the Treasurer, and the Auditor of the State of Arizona, with which the plaintiff herein is not by law concerned and with which he is not authorized by law to interfere. Defendants deny each and every remaining allegation of paragraph XXVII of plaintiff's complaint.

#### XVIII.

Defendants deny the allegations of paragraph XXVIII of plaintiff's complaint.

#### XIX.

For answer to paragraph XXIX of plaintiff's complaint, defendants deny that the refunding of said Maricopa County Highway Bonds is a plan or device by Maricopa County to redeem said outstanding Maricopa County Highway Bonds, but allege that the redemption of said outstanding Maricopa County Highway Bonds is authorized by Chapter 1, Title 52, Revised Statutes of Arizona, 1913, as construed by the decisions of the Supreme Court of Arizona, as aforesaid. Defendants allege that they are without knowledge or information sufficient



to form a belief as to the truth of the allegations concerning the plan which other counties of the State of Arizona, as well as municipalities, school districts and other subdivisions of the State of Arizona, propose to pursue with respect to the refunding of their outstanding bonds, but in this [58] respect defendants allege that the truth or falsity of said allegations is wholly immaterial to the issues involved in the cause of action herein. Defendants further allege that the Maricopa County Highway Bonds held in the Treasury of the State of Arizona, under the provisions of said Enabling Act, were, at the date of their issue, and are now, subject to redemption as provided by Chapter 1, Title 52, Revised Statutes of Arizona, 1913, as construed by the decisions of the Supreme Court of Arizona, as aforesaid, and that the redemption of said bonds will not, and cannot, violate any trust under which said bonds are held. Defendants allege that the allegations of said paragraph XXIX of plaintiff's complaint, insofar as they refer to bonds other than outstanding Maricopa County Highway Bonds which are subject to redemption by the Loan Commissioners of the State of Arizona, as aforesaid, are wholly immaterial and are beyond the issues involved in this cause of action. These defendants deny that a citizen of the State of Arizona is authorized to institute a suit in the United States District Court for the District of Arizona to enforce any right which plaintiff asserts he is entitled to enforce in this cause of action. Defendants deny each

and every remaining allegation of said paragraph XXIX of plaintiff's complaint.

## XX.

For answer to paragraph XXX of plaintiff's complaint, defendants allege that the allegations thereof are wholly immaterial and are of matters and things of which plaintiff herein is not lawfully concerned. Defendants allege that said outstanding Maricopa County Highway Bonds are subject to redemption before maturity as provided by Chapter 1, Title 52, Revised Statutes of Arizona, 1913, as construed by the Supreme Court of the State of Arizona, as aforesaid. [59]

## XXI.

For answer to paragraph XXXI of plaintiff's complaint, defendants admit the enactment of the provisions of law and the decisions of the Supreme Court of the State of Arizona as set forth in said paragraph of plaintiff's complaint, but defendants deny that said laws, or any of them, or said decisions of the Supreme Court of Arizona, will impair the obligation of contract entered into by Maricopa County with the purchasers of said Maricopa County Highway Bonds, and further deny that said laws, or any of them, or said decisions, will deprive the trust funds of the State of Arizona held under the terms of the Enabling Act of property without due process of law. For further answer to paragraph XXXI of said complaint defendants deny each and every remaining allegation thereof, and

in support of such denial, and for further answer to the allegations of said paragraph XXXI of plaintiff's complaint, defendants allege that said outstanding Maricopa County Highway bonds are subject to redemption prior to their maturity dates as provided by Chapter 1, Title 52, Revised Statutes of Arizona, 1913, as construed by the Supreme Court of the State of Arizona, as aforesaid.

## XXII.

For answer to paragraph XXXII of plaintiff's complaint, defendants admit the enactment and provisions of the various laws therein referred to, but deny each and every other allegation in said paragraph XXXII of plaintiff's complaint, and in this respect defendants allege that the law of the State of Arizona is and has been finally and conclusively adjudicated by the Supreme Court of the State of Arizona by the decisions of said court hereinabove referred to, and the judgments of said court peremptorily commanding said Loan Commissioners of the State of Arizona to refund said outstanding Maricopa County Highway Bonds. [60]

## XXIII.

For answer to paragraph XXXIII of plaintiff's complaint, defendants admit the enactment and provisions of the various laws therein referred to, but deny each and every other allegation in said paragraph XXXIII of plaintiff's complaint, and in this respect defendants allege that the law of the State of Arizona is and has been finally and con-

clusively adjudicated by the Supreme Court of the State of Arizona by the decisions of said court hereinabove referred to, and the judgments of said court peremptorily commanding said Loan Commissioners of the State of Arizona to refund said outstanding Maricopa County Highway Bonds.

#### XXIV.

For answer to paragraph XXXIV of plaintiff's complaint, defendants admit the enactment and provisions of the various laws therein referred to, but deny each and every other allegation in said paragraph XXXIV of plaintiff's complaint, and in this respect defendants allege that the law of the State of Arizona is and has been finally and conclusively adjudicated by the Supreme Court of the State of Arizona by the decisions of said court hereinabove referred to, and the judgments of said court peremptorily commanding said Loan Commissioners of the State of Arizona to refund said outstanding Maricopa County Highway Bonds.

#### XXV.

For answer to paragraph XXXV of plaintiff's complaint, defendants deny that the refunding of said Maricopa County Highway Bonds will deprive the owners thereof of their property without due process of law contrary to the Fourteenth Amendment to the Constitution of the United States. Defendants allege that plaintiff, who does not allege that he is an owner and holder of such bonds, is not

authorized to claim, or assert in this action a denial of [61] due process of law on behalf of owners and holders of such bonds who are not parties to this suit and who are not complaining of denial of due process of law. Defendants deny that the refunding of said Maricopa County Highway Bonds will deprive the trust fund of the State of Arizona in which said bonds are deposited and held of property without due process of law. Defendants admit the enactment and provisions of the various laws therein referred to, but deny each and every other allegation in said paragraph XXXV of plaintiff's complaint, and in this respect defendants allege that the law of the State of Arizona is, and has been, finally and conclusively adjudicated by the Supreme Court of the State of Arizona as set forth in the decisions of said court hereinabove referred to, and the judgments of said court peremptorily command said Loan Commissioners of the State of Arizona to refund said outstanding Maricopa County Highway Bonds.

#### XXVI.

Defendants deny the allegations of paragraphs XXXVI, XXXVII, and XXXVIII of plaintiff's complaint.

#### THIRD DEFENSE

Defendants allege that the cause of action set forth in the plaintiff's complaint, if any, is barred by the decisions and judgments of the Supreme Court of the State of Arizona, as aforesaid, com-



manding the Loan Commissioners of the State of Arizona to refund said Maricopa County Highway Bonds, and that said decisions and judgments are res adjudicata of said cause of action, and constitute the rule of decision to be followed and applied by this court to the complaint herein.

#### FOURTH DEFENSE

Defendants allege that plaintiff herein has instituted this suit for the purpose of harrassing these defendants, and each [62] of them, and for the purpose of delaying, impeding, hindering, and obstructing these defendants from carrying out and complying with the peremptory writs of mandamus issued out of the Supreme Court of the State of Arizona, as aforesaid, and that the maintenance of this suit by plaintiff constitutes vexatious litigation.

Wherefore defendants pray that plaintiff be denied the relief prayed for by the complaint herein, and that said complaint be dismissed; for such other and further relief as may be meet and proper in the premises; and for their costs herein expended.

JOE CONWAY

Attorney General

EARL ANDERSON

Chief Assistant Attorney General

Attorneys for Defendants who  
are officials of the State of  
Arizona.



HAROLD R. SCOVILLE

Maricopa County Attorney

LESLIE C. HARDY

Special Counsel for Maricopa County

Attorneys for Defendants Maricopa

County and the officials of Mari-

copa County, Arizona

[Endorsed]: Filed May 22, 1943. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Gwen Roby, Deputy Clerk. [63]

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[Title of District Court and Cause.]

NOTICE OF MOTION FOR SUMMARY  
JUDGMENT

To: Messrs. Gust, Rosenfeld, Divelbess, Robinette  
& Coolidge, attorney for plaintiff herein:

Please take notice, that on the 7th day of June, 1943, at the hour of 10:00 A. M., or as soon thereafter as counsel can be heard, the undersigned attorneys for the defendants herein will appear before the Judge of the above entitled Court, and move that summary judgment be entered herein in accordance with Rule 56 of the Federal Rules of Civil Procedure for the District Courts of the United States.

In support of said motion for summary judgment the undersigned counsel for the defendants herein will file with the Clerk of the above entitled Court,

as constituting a part of the record herein, the following:

1. Motion for Summary Judgment Under Rule 56(b).
2. Affidavit in Support of Motion for Summary Judgment, executed by Earl Anderson.
3. Affidavit in Support of Motion for Summary Judgment, executed by Leslie C. Hardy.
4. Answer of Defendants. [64]
5. Memorandum of Points and Authorities on Behalf of all Defendants in Support of Motion for Summary Judgment.

Copies of each and all of the foregoing enumerated documents are herewith served upon you as counsel for plaintiff herein.

At the time indicated, as aforesaid, the documents above enumerated, together with the complaint on file herein, and such other parts of the record herein as may be appropriate thereto, will be presented to the Judge of the above entitled Court for his consideration in disposing of said motion for summary judgment.

Dated this 22nd day of May, 1943.

JOE CONWAY

Attorney General

EARL ANDERSON

Chief Assistant Attorney General

Attorneys for Defendants who  
are officials of the State of  
Arizona

HAROLD R. SCOVILLE

Maricopa County Attorney

LESLIE C. HARDY

Special Counsel for Maricopa County  
Attorneys for Defendants Maricopa  
County and the officials of Maricopa  
County, Arizona.

On this 22 day of May, 1943, the undersigned counsel for the plaintiff herein, do hereby admit service of copies of the foregoing Notice of Motion for Summary Judgment, together with the documents enumerated therein and numbered from one to five inclusive.

GUST, ROSENFELD, DIVELBESS,  
ROBINETTE & COOLIDGE

By J. L. GUST (f)

Attorneys for the Plaintiff

[Endorsed]: Filed May 22, 1943. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Gwen. Roby, Deputy Clerk. [65]

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT  
UNDER RULE 56(b)

Defendants Jim Brush, State Treasurer of the State of Arizona, Sidney P. Osborn, Governor of the State of Arizona, Dan E. Garvey, Secretary of State of Arizona, Maricopa County, John A. Foote, Ed Oglesby and Phil Isley, constituting the Board of Supervisors of Maricopa County, Arizona, move the court as follows:

1. For summary judgment that this court has no jurisdiction of this controversy because this action is one against the State of Arizona, without its consent, by a citizen of said state.

2. For summary judgment that this court has no jurisdiction of this controversy under its provisions of the Judicial Code of the United States.

3. For summary judgment that the provisions of the Act of Congress, June 20, 1910, Chapter 310, 61st Cong. alone, give plaintiff as a citizen of the State of Arizona no right to resort to the federal court to enforce the provisions of the trust created thereby.

4. For summary judgment as to the whole of the claim asserted by plaintiff, E. J. Jones. [66]

5. For summary judgment that no question of a violation of the provisions of the trust created by the Act of Congress, June 20, 1910, Chapter 310, 61st Cong. is presented by this complaint.

6. For summary judgment that this court is bound by the decisions of the Supreme Court of the State of Arizona in the cases of *Maricopa County v. Osborn, et al*, (1942), ..... *Ariz.* .....; 125 *Pac.* (2d) 703, and the decision rendered by that court on April 12, 1943, in the subsequent case of *Maricopa County v. Osborn, et al*, ..... *Ariz.* ....., 136 *Pac.* (2d) 270, holding that the Maricopa County Highway Bonds herein the subject of litigation are redeemable and refundable prior to their respective maturity dates, as provided by the laws of the State of Arizona.

7. For summary judgment that the Maricopa County Highway Bonds herein the subject of litigation be adjudged to be redeemable and refundable prior to their respective maturity dates by the Loan Commissioners of the State of Arizona.

8. For summary judgment that upon the giving of notice for call and redemption of the outstanding Maricopa County Highway Bonds as prescribed by the statutes of the State of Arizona, Maricopa County will cease to remain liable to all holders of Maricopa County Highway Bonds for payment of interest on said bonds accruing thereafter.

9. For summary judgment that defendants' action in refunding said outstanding Maricopa County Highway Bonds will infringe none of plaintiff's rights under the Constitution of the United States.

10. For summary judgment that defendants have and recover their costs of suit herein incurred. [67]

Dated this 22nd day of May, 1943.

JOE CONWAY

Attorney General

EARL ANDERSON

Chief Assistant Attorney General

Attorneys for Defendants who  
are officials of the State of  
Arizona

HAROLD R. SCOVILLE

Maricopa County Attorney

LESLIE C. HARDY

Special Counsel for Maricopa County  
Attorneys for Defendants Maricopa  
County and the officials of Mari-  
copa County, Arizona.

[Endorsed]: Filed May 22, 1943. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Gwen. Roby, Deputy Clerk. [68]

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[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT UNDER RULE 56

State of Arizona,  
County of Maricopa—ss.

Leslie C. Hardy, first being duly sworn, deposes and says:

1. That he was at all times mentioned herein, and he is now, an attorney engaged in the practice



of law in the Courts of the State of Arizona, and that he is authorized to appear herein in association with the County Attorney of Maricopa County, and was also authorized to appear as special counsel for Maricopa County, as plaintiff in an original action in mandamus brought before the Supreme Court of the State of Arizona on March 4, 1943, entitled: "Maricopa County, a body politic and corporate vs. Sidney P. Osborn, Governor of the State of Arizona, Ana Frohmiller, State Auditor of the State of Arizona; and J. D. Brush, State Treasurer of the State of Arizona, constituting the Loan [69] Commissioners of the State of Arizona, No. 4606", and that although pending at the time of the filing of the complaint herein before this court, said action in mandamus was decided by the Supreme Court of the State of Arizona on April 12, 1943.

2. That in his capacity as special counsel affiant became and is now personally familiar with the facts surrounding the indebtedness of the said Maricopa County in the principal amount of \$4,100,000 of Maricopa County Highway Bonds.

3. That defendant, Maricopa County, heretofore, to-wit: under date of June 15, 1919, pursuant to the laws of the State of Arizona, duly authorized and issued *and issued* \$4,000,000 principal amount of Highway Bonds, bearing interest at the rate of 5½% per annum, payable semi-annually, maturing over a period of 20 years beginning June 15, 1930, of which issue there were on or about July 7, 1941, outstanding and unpaid bonds in the principal

amount of \$2,100,000, whereof there are now outstanding and unpaid as of the date hereof \$1,700,000 principal amount of said bonds, being bonds numbered 2301 to 4000, both inclusive, which mature and become payable in serial amounts on June 15th in each of the years 1944 to 1949, both inclusive. That of said issue there is also outstanding and unpaid \$200,000 principal amount of bonds maturing June 15, 1943.

4. That defendant, Maricopa County, heretofore, to-wit, under date of January 15, 1921, pursuant to the laws of the State of Arizona, duly authorized and issued \$4,500,000 principal amount of Highway Bonds, bearing interest at the rate of 6% per annum, payable semi-annually, maturing over a period of 20 years beginning January 15, 1931, of which issue there were on or about July 7, 1941, outstanding and unpaid bonds in the principal amount of \$2,800,000, whereof there are now outstanding and unpaid as of the date hereof \$2,400,000 principal amount of said bonds, being bonds [70] numbered 6101 to 8500, both inclusive, which mature and become payable in serial amounts on January 15th in each of the years 1944 to 1951, both inclusive.

5. That on July 7, 1941, the Board of Supervisors of Maricopa County passed and adopted a resolution officially demanding that the Loan Commissioners of the State of Arizona redeem and refund said issued and outstanding Highway Bonds of Maricopa County in the aggregate principal amount of \$4,900,000, which aggregate principal

amount was outstanding as of said July 7, 1941, and by such resolution the Board of Supervisors of Maricopa County found and recited that the redeeming and refunding of such outstanding indebtedness would be for the profit and benefit of Maricopa County.

6. That on November 7, 1941, said Loan Commissioners informed the Board of Supervisors of Maricopa County, in writing, that they were unauthorized to refund said outstanding indebtedness of Maricopa County as demanded by Maricopa County, as aforesaid, and said Loan Commissioners did thereupon refuse to redeem and refund said outstanding Highway Bonds of Maricopa County or to provide for the refunding thereof, and thereupon, to-wit, on February 2, 1942, Maricopa County filed an original action in mandamus in the Supreme Court of the State of Arizona, which proceedings were entitled as hereinbefore set forth in paragraph 1, to command said Loan Commissioners to redeem and refund said outstanding indebtedness of Maricopa County notwithstanding the refusal of said Loan Commissioners to do so.

7. That said original action filed in the Supreme Court of the State of Arizona, as aforesaid, duly came on for hearing and decision, and on May 4, 1942, said Court rendered and entered its judgment making peremptory the alternative writ of mandamus [71] which had theretofore issued in said action, and by said peremptory writ of mandamus said Loan Commissioners were commanded to re-

deem said outstanding indebtedness of Maricopa County; that on September 16, 1942, said Supreme Court of the State of Arizona, reaffirmed its judgment by denial of a petition for rehearing filed by defendants in said original action for mandamus.

8. That in said decision, the Supreme Court of the State of Arizona held and determined that the statutes of the State of Arizona, being Chapter I, Title 52, Arizona Revised Statutes of 1913, were in full force and effect on the dates of June 15, 1919, and January 15, 1921, being respectively the dates of issuance of Maricopa County Highway Bonds, and that said statutes entered into and became a part of said Maricopa County Highway Bonds; that Chapter I, Title 52, Arizona Revised Statutes of 1913, authorized the call and redemption and refunding of said bonds prior to their respective maturity dates; that the calling of outstanding Maricopa County Highway Bonds for the redemption and refunding prior to their respective maturity dates was a legal and valid power conferred upon the Loan Commissioners of the State of Arizona by the provisions of Chapter I, Title 52, Arizona Revised Statutes of 1913, and that it became the duty of said Loan Commissioners to call said bonds for redemption and refunding upon official demand of the County of Maricopa. That in view of the foregoing decision, the alternative writ of mandamus issued therein was made peremptory.

9. That in said original proceedings in mandamus brought in the Supreme Court of the State of

Arizona by the County of Maricopa on February 2, 1942, plaintiffs' attorneys herein, being Messrs. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, appeared therein and were authorized and permitted to [72] appear therein by order of said Supreme Court duly made and entered. That said proceeding was thereafter duly heard by the Supreme Court of the State of Arizona and that, as affiant is informed and believes, plaintiffs herein and all other holders and owners of the bonds of said Maricopa County described in said complaint were and became parties to said proceeding as a class and were represented in said proceeding by their attorneys Messrs. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, and/or by their attorneys Messrs. Pershing, Bosworth, Dick & Dawson of Denver, Colorado, and/or by Messrs. Cox and Cox and Herbert Watson of Phoenix, Arizona. That said Attorneys for plaintiffs herein made the same contention before the Supreme Court of Arizona as is now made by them before this Court to the effect that the Loan Commissioners of the State of Arizona had no authority under the laws of the State of Arizona to redeem outstanding Maricopa County Highway Bonds prior to their fixed maturity dates. That in said proceedings said attorneys who now represent the plaintiffs in this action had fully considered and determined against them all arguments to the effect that said bonds were not redeemable prior to their respective maturity dates and refundable by the issuance of State of Arizona Refunding Bonds.



That the brief of plaintiff's attorneys filed in said action, a copy of which is annexed hereto and marked "Exhibit C," and which is hereby referred to and by reference incorporated herein and made a part hereof, reads in part on pages 6-7, and 17-18 as follows:

"Proposition number 1 stated above, to the effect that the bonds of Maricopa County which said county desires to refund, were issued with a definite maturity date without provisions for calling before maturity in exact compliance with Chapter 2, Title 52, Civil Code 1913, is clear from an examination of Sections 5266 [73] to Section 5281, both inclusive. Said sections provide a complete procedure for authorization by the electors, the issuance, payment and retirement of county, school district and municipal bonds. No aid from Chapter 1 of said Title 52 is required to provide for such authorization, issuance, payment or retirement of said bonds. Section 5273 expressly requires that the call for the elections shall set forth among other things the term of the bonds and the date of maturity of the bonds. Section 5274 says that the bonds shall be payable at a date not to exceed forty years from the date of their issuance. Section 5279 provides that the tax to be levied shall provide a fund for the redemption of the bonds when they mature and section 5281 provides that when the bonds shall mature it shall be the duty of the county or city or town treas-



urer, as the case may be, to give notice for four weeks in some newspaper, of the intention to redeem such bonds, and for the application of money on hand to such redemption. Clearly the provisions of these sections authorize the officials of the counties and municipalities, when so directed by the electors at an election, to make bonds payable at a definite maturity date without provision for prior call and when they have so issued bonds a contract has been entered into by the purchasers of these bonds with the county or municipality that cannot be set aside at a later date by either party because the exigencies of finance make it profitable to escape from the contract. \* \* \*."

\* \* \* \* \*

"Proposition number 5, above stated, to the effect that the provisions of 5273 providing a date of maturity for bonds to be stated in the call for election and provisions of Section 5279 providing for the levy of a tax to pay said bonds until they mature, and the provisions of Section 5281 providing for the retirement of such bonds after maturity, cannot be held to have been repealed by the provisions for refunding and the provisions reserving the right to call bonds contained in Sections 5252 and 5253, Chapter 1 of said Title 52, is very clear for several reasons. In the first place as has been pointed out, the provisions in Chapter 2 refer to an entirely different kind of bond than do the provisions in Chapter 1.

“In the second place, no express repeal being made, an implied repeal will not be presumed unless the two provisions cannot stand together. \* \* \*.” [74]

10. That pursuant to said peremptory writ of mandamus issued from the Supreme Court of the State of Arizona, said Loan Commissioners duly passed and adopted a resolution authorizing the issuance of refunding bonds of the State of Arizona for the purpose of redeeming said Maricopa County Highway Bonds then outstanding. That through proceedings duly and regularly taken under the laws of the State of Arizona, due notice was given and bids were called for by the said Loan Commissioners for the purchase of refunding bonds of the State of Arizona in the principal amount of \$4,100,000. That said Loan Commissioners, to-wit, on February 10, 1943, accepted by resolution incorporated in the Minutes of a Meeting of the Loan Commissioners of the State of Arizona, annexed hereto, marked “Exhibit B”, the joint bid of, and awarded the purchase of said refunding bonds to, Bank of America National Trust and Savings Association, Boettcher and Company, and R. H. Moulton & Company. That notwithstanding said award and sale of said State of Arizona Refunding Bonds, said Loan Commissioners, on February 12, 1943, advised the Board of Supervisors of Maricopa County, in writing, as such Loan Commissioners, that they would not execute or deliver any of said refunding

bonds to said purchasers and said Loan Commissioners refused to execute or deliver any of said State of Arizona Refunding Bonds to said purchasers. That thereupon the County of Maricopa, as plaintiff, on March 4, 1943, brought a second original action in mandamus in the Supreme Court of the State of Arizona to compel said Loan Commissioners to call and redeem said outstanding bonds of the County of Maricopa and issue therefor refunding bonds of the State of Arizona as demanded by the Board of Supervisors of Maricopa County by official resolution under date of July 7, 1941.

[75]

11. That said second original action filed in the Supreme Court of the State of Arizona, as aforesaid was entitled "Maricopa County vs. Osborn, et al," and was decided on April 12, 1943, and is reported in 136 Pac. (2d) 270, (Adv. Sheet May 14, 1943, Vol. 1, p. 270), wherein said court rendered and entered its judgment making peremptory the alternative writ of mandamus which had theretofore issued in said action; and by said peremptory writ of mandamus said Loan Commissioners were directed and commanded to execute and deliver \$4,100,000 refunding bonds of the State of Arizona for the purpose of redeeming a like amount of outstanding Maricopa County Highway Bonds.

12. That in said opinion, said Supreme Court of the State of Arizona reaffirmed its former decision in the case of Maricopa County vs. Osborn (1942), ..... Ariz. ....; 125 Pac. (2d) 703, and held and

determined that outstanding Maricopa County Highway Bonds in the principal amount of \$4,100,000 were redeemable prior to their respective maturity dates under the provisions of Chapter I, Title 52, Arizona Revised Statutes of 1913, and were refundable by the issuance of State of Arizona Refunding Bonds.

13. That said judgment of the Supreme Court of the State of Arizona rendered and entered April 12, 1942, adjudicates in every material respect, both as to substance and procedure, the right of Maricopa County under the Constitution and statutes of the State of Arizona to redeem and refund \$4,100,000 principal amount of outstanding Maricopa County Highway Bonds herein the subject of litigation.

14. That said judgments of the Supreme Court of the State of Arizona finally determining the law of the State of Arizona in respect of the right of Maricopa County to redeem its outstanding indebtedness are valid and binding on defendants as and constituting the Loan Commissioners of the State of Arizona. [76]

15. That there is no genuine triable issue of material fact herein; that the only issues herein involved are issues of law upon which defendants and all of them are entitled to judgment as prayed for.

16. That by virtue of the decision of the Supreme Court of the United States in the case of *Erie R. R. Co. vs. Tompkins* (1938), 304 U. S. 64,

58 S. Ct. 817, 82 L. Ed. 118, 114 A. L. R. 1487, these decisions of the Supreme Court of Arizona finally establishing the law of the State of Arizona are, as affiant verily believes, binding and conclusive on this court. That, accordingly, no federal question is involved in this proceeding and the law of the State of Arizona, which is binding upon this court, having been finally established by decisions of the Supreme Court of Arizona requires that judgment be entered in favor of defendants.

LESLIE C. HARDY

Subscribed and sworn to before me this 22nd day of May, 1943.

AGNES WESTRA

Notary Public

My Commission will expire:

July 2, 1943

[Seal] [77]

## “EXHIBIT C”

In the Supreme Court of the  
State of Arizona

No. 4489

MARICOPA COUNTY, a Municipal Corporation,  
Plaintiff,

vs.

SIDNEY P. OSBORN, Governor of the State of  
Arizona; ANA FROHMILLER, State Auditor  
and JOE HUNT, State Treasurer, Constituting  
the LOAN COMMISSIONERS OF THE  
STATE OF ARIZONA,

Defendants.

BRIEF OF GUST, ROSENFELD, DIVELBESS,  
ROBINETTE AND COOLIDGE, AS AMICI  
CURIAE.

This brief is filed by the undersigned members of the bar of this court as amici curiae pursuant to an order of the court permitting the same to be filed. It is not our purpose to question generally the statement of facts made by the plaintiff in its brief, nor the correctness of the legal propositions advanced in that brief. We desire to call the attention of the court to what we believe to [78] be a fallacy underlying the theory of the plaintiff's case and the arguments advanced in support of that case.

This fallacy lies in the plaintiff's assuming that the retirement of county and municipal bonds, is-



sued under Chapter 2, Title 52, Civil Code of 1913, is governed by the provisions of Chapter 1 of said Title, rather than by the provisions of the chapter under which said bonds were issued. We believe that the following propositions will make clear to the court that this fallacy permeates plaintiff's theory of this case and that when said fallacy is corrected mandate cannot issue as prayed for:

1. The bonds the plaintiff Maricopa County desires to have refunded by the State Loan Commissioners in this case were issued with a definite maturity date, without provision for call before maturity, in exact compliance with Chapter 2, Title 52, Civil Code of 1913, which contains a complete procedure for the authorization, issuance, payment and retirement of county and other municipal bonds.

2. The provisions of Section 5252, contain- [79] ed in Chapter 1, Title 52 Civil Code of 1913, making it the duty of the State Loan Commissioners to issue new bonds for the purpose of paying, redeeming and refunding existing indebtedness when the same can be issued at a lower rate of interest than previously paid, do not apply to unmatured bonds, unless such bonds are subject to call or are voluntarily surrendered by the holders.

3. The provisions of Section 5253, Chapter 1, of Title 52, Civil Code of 1913, providing that the state reserves the right to redeem at par bonds in their numerical order fifteen years after the date thereof, apply only to bonds issued by the State Loan Commissioners for state indebtedness and do

not apply to bonds issued by counties or municipalities, under the provisions of Chapter 2 of Title 52, Civil Code of 1913.

4. The provision of Section 5260, in Chapter 1 of Title 52, Civil Code of 1913, authorizing the State Loan Commissioners on demand from the Board of Supervisors or municipal or school districts, to provide for the redeeming or refunding of county, municipal or school district indebtedness in the same manner as [80] other state indebtedness, refers only to the procedure for refunding and does not write into county and municipal bonds issued under Chapter 2, Title 52, Civil Code of 1913, the reservation of the right to redeem bonds issued by the Loan Commissioners reserved to the state by Section 5253 of Chapter 1, of said Title 52.

5. The provisions of Section 5273, Chapter 2, Title 52, Civil Code of 1913, providing a date of maturity for bonds to be stated in the call for the election and the provisions of Section 5279 in said Chapter 2, providing for the levy of a tax to pay said bonds until they mature and the provisions of Section 5281 in said Chapter, providing for the retirement of such bonds after maturity cannot be held to have been repealed by the provisions for refunding and the provisions reserving the right to call bonds contained in Sections 5252 and 5253 in Chapter 1 of said Title 52, (a) for the reason that they do not refer to the same kind of bonds, (b) such implied repeal is not presumed unless the two provisions cannot stand together, (c) Sections 5273

and 5279 and several other sections of Chapter 2 were enacted after Chapter 9, (d) Chapter 29 Laws [81] of 1912 First Special Session, being the original enactment of Chapter 1, Title 52, did not comply with the constitutional provision relating to amending acts and (e) the provisions of both chapters are preserved for operation in their respective fields by the code revisions of 1913 and 1928.

6. Admitting that it is the duty of the Loan Commissioners to proceed to refund county bonds on the request of the county under the provisions of Section 5260, Chapter 1, Title 52, Civil Code of 1913, the mandate in this case cannot be granted because Maricopa County does not show that it has any bonds to be refunded as the bonds in question are not yet due and are not subject to call before maturity.

7. Mandamus should not issue to require the Loan Commissioners to proceed under the provisions of Section 5260, Chapter 1, Civil Code of 1913, until Maricopa County has established its right to call the bonds in question by appropriate proceedings against the bondholders for until such right is established, there is no plain and clear duty on the part of the State Loan Commissioners to proceed.

### ARGUMENT [82]

Proposition number 1 stated above, to the effect that the bonds of Maricopa County which said county desires to refund, were issued with a definite

maturity date without provisions for calling before maturity in exact compliance with Chapter 2, Title 52, Civil Code 1913, is clear from an examination of Sections 5266 to Section 5281, both inclusive, Said sections provide a complete procedure for authorization by the electors, the issuance, payment and retirement of county, school district and municipal bonds. No aid from Chapter 1 of said Title 52 is required to provide for such authorization, issuance, payment or retirement of said bonds. Section 5273 expressly requires that the call for the election shall set forth among other things the term of the bonds and the date of maturity of the bonds. Section 5274 says that the bonds shall be payable at a date not to exceed forty years from the date of their issuance. Section 5279 provides that the tax to be levied shall provide a fund for the redemption of the bonds when they mature and Section 5281 provides that when the bonds shall mature it shall be the duty of the county or city or town treasurer, [83] as the case may be, to give notice for four weeks in some newspaper, of the intention to redeem such bonds, and for the application of money on hand to such redemption. Clearly the provisions of these sections authorize the officials of the counties and municipalities, when so directed by the electors at an election, to make bonds payable at a definite maturity date without provision for prior call and when they have so issued bonds a contract has been entered into by the purchasers of these bonds with the county or municipality that

cannot be set aside at a later date by either party because the exigencies of finance make it profitable to escape from the contract. That such a contract may be desirable for the sellers of the bonds for the reason that they will bring a better price than if subject to call at any time is pointed out by the courts in the following cases:

Fales vs. Multnomah County, 248 Pac. 151, 153.

State vs. Kansas City, 204 Pac. 690, 691.

Mitchell vs. Knox County Fiscal Court, 177 S.W. 279, 286.

In the Fales case, *supra*, the court says: [84]

“Callable bonds, sometimes called redeemable or optional bonds, which kind of school bonds are provided for by section 5062, Or. L., being the Act of 1913, ‘redeemable at the pleasure of the (school) district but due and payable absolutely twenty years from date,’ are denominated term bonds, which may be called for payment before their maturity. This is in order that the issuing municipality may redeem its indebtedness if it chooses to exercise the option, without being obliged to do so. Very few of such bonds are called for payment before their maturity. They do not sell at the same price as they would for the term without the optional feature, since, for the purpose of computing the selling price or basis, the bond is treated as running only to the optional date and not to maturity.”



In the case of *State vs. Kansas City*, *supra*, the court says:

“\* \* \* privilege of short-time prepayment operates in the sale of the bonds at a discount for one-half of 1 per cent; and, if the city must write into proposed bonds privilege of prepayment, the aggregate loss on bond issues for the year 1922 will be about \$25,000.”

In the *Mitchell* case, *supra*, the court says:

“It is well known that bonds which run for a specified long term, without being subject to redemption before their maturity bring a higher price than bonds that are subject to redemption before their maturity. On the other hand, it is to the interest of the county to have the right to redeem a long-term bond at any time before its maturity. Interest rates may fall, or the county may have funds on hand which it can conveniently apply to the payment of its debts. It is therefore usual, in bonds of this character, to make all or [85] some of them redeemable at some time before their maturity, and after they have run a reasonable length of time. This form tends to make them marketable, at a good price. Furthermore, the statute does not mean that the fiscal court must insert the redemption clause into all of its bonds, but merely that it has the power to do so, and that power involves the right to insert the redemption clause in some bonds, and omit it from others.”



Proposition number 2, the second proposition above stated, to the effect that the provisions of Section 5252 of Chapter 1, Title 52, Civil Code of 1913, making it the duty of the Loan Commissioners to issue new bonds for the purpose of paying, redeeming and refunding indebtedness when the same can be issued at a lower rate of interest to the profit and benefit of the state, does not authorize the call and retirement of bonds bearing a definite maturity date, without provision for call and retirement, is established by a comparison of the provisions of said Section 5252 with Section 5253 immediately following. Section 5253 was adopted by the same legislature as adopted Section 5252, but at a later session. If said Section 5252 is to be construed as authorizing the retirement of bonds at any time whenever the interest rate is such as to make it profitable for the debtor, then the provision in Section 5253, reserving [86] to the state the right to redeem bonds at par after fifteen years, in their numerical order, is not only wholly unnecessary but is positively misleading to the purchasers of the bonds. In view of said Section 5253, Section 5252 must be construed as limiting the right to redeem and refund bonds consistent with Section 5253, that is, giving the right to refund only when the bonds have matured or are callable under the fifteen year provision or are being voluntarily surrendered by the holders thereof. That such is the proper construction of these two sections taken together, is

clear from the case of *State ex rel. Board of Fund Commissioners vs. Smith*, 96 S.W. (2) 348.

The language to be construed in that case was the following:

“The board of fund commissioners are hereby authorized and empowered to enter into contracts, and to refund any part of the bonded indebtedness of the state, whenever they can do so to the advantage of the state in change of time, terms of payment or interest payment upon the indebtedness which it is proposed to refund,”

and the court in construing the same said the following:

“Or, stated differently, if section 11500 authorizes the calling and redemption of any and all outstanding bonds at any time advantage will thereby result to the state, [87] and that section is to be read into all bonds issued subsequent to the enactment of that section, then all such bonds must certainly be option bonds of the character described in section 11499 and the latter section rendered meaningless. No such intention will be charged to the Legislature by the courts if it can be avoided. The only possible construction which can be given section 11500 which will not render section 11499 nugatory is that the former section applies only to the refunding of nonoption bonds at their stated maturity or by contractual agreement, and to

the refunding of option bonds during the period of the option when advantage to the state will result. Such a construction is reasonable and in entire accord with the principle expressed by the General Assembly in the following introductory words of its Act of March 31, 1885; 'Whereas, the maintenance of the credit of the state is of the utmost importance and should ever be guarded with the most jealous care.' Laws 1885, p. 39.

"It is not only possible, but is very probable, that when the General Assembly authorized the fund commissioners to refund any part of the bonded indebtedness of the state, 'whenever they can do so,' etc., it was understood that bonds then outstanding, or which might thereafter be issued, containing the solemn promise of the state to pay interest at an agreed rate for a definite length of time, constituted such an insurmountable and clearly recognized obstacle to the changing of the contract without the agreement of both parties that it was not deemed necessary to incorporate the exception in the act.

"(3) The bonds herein involved, having a definite maturity date stated therein, containing the unqualified promise to pay interest at a stated rate for a definite length of time, and issued under constitutional authority containing as its only direction relative to maturity the words, 'and maturing not later than thirty-five

years from their date (section 44d, art. 4, Const. see Laws Mo. 1933-34, Ex. Sess., p. 174), are not option bonds and cannot [88] be refunded prior to maturity except by agreement. Since the bonds are not due and there is no agreement that they may be refunded, it necessarily follows that the Board of Fund Commissioners is without authority to issue refunding bonds for the purpose of refunding the present issue."

96 S.W. (2) 351.

Proposition number 3 above stated, to the effect that the provisions of Section 5253, Chapter 1 of Title 52, Arizona Civil Code of 1913, providing that the state reserves the right to redeem at par bonds in their numerical order fifteen years after date thereof, apply only to bonds issued by the State Loan Commissioners for state indebtedness and do not apply to bonds issued by the counties or municipalities, under the provisions of Chapter 2, Title 52, Civil Code 1913, is obvious. Sections 5251 and 5252 immediately preceding Section 5253 refer only to outstanding and existing indebtedness of the State of Arizona or the Territory of Arizona assumed by the state, and such state indebtedness as may be or is now authorized by law, and to subsisting state legal indebtedness, and the said Section 5253 refers to said bonds thereby clearly indicating Section 5253 applies to the bonds mentioned in the preceding two sections. Furthermore, a [89] comparison of the provisions of Section 5253 with Sec-

tion 5273 in Chapter 2 of said Title 52 shows that Section 5253 is not intended to apply to county and municipal bonds, for the maximum rate of interest permitted by Section 5253 is 5% while Section 5273 permits a maximum of 6% for county and municipal bonds, and a comparison of Section 5253 with Section 5274 shows that the maximum term for bonds issued under Section 5253 is 25 years, while the maximum term for county and municipal bonds is forty years. Furthermore, the bonds mentioned in Section 5253 must be signed by the Loan Commissioners, while the county and municipal bonds issued under Section 5274 must be signed and attested when issued by the county by the chairman and clerk of the board of supervisors, when issued by school districts by chairman and clerk of the board of school trustees and must be countersigned by the chairman of the board of supervisors of the county, and when issued by a city or town must be signed by the mayor and city clerk of such city or town. A comparison of Section 5253 with Section 5260 further discloses the fact that the faith and credit of the state is pledged for the [90] payment of the bonds and the interest accruing thereon as to bonds issued under Section 5253, but as to county and municipal bonds refunded by the Loan Commissioners pursuant to Section 5260 payment of the bonds is required from the funds of the county, municipality or school district, only. A comparison of Section 5253 with Section 5277 shows that the bonds referred to by Section 5253 must be registered by the State Auditor in a book to be kept



by him for that purpose, and the county and municipal bonds issued in pursuance of Chapter 2 of Title 52 must be entered upon the record of proceedings of the governing body of the school district, city or town, or other municipal corporation disposing of the same.

It being thus clear that most of the provisions in Section 5253 cannot pertain to county and municipal bonds issued under Chapter 2 of Title 52, it is, indeed, a far stretch to contend that the provision for reservation of the right of redemption must be imported into the county and municipal bonds issued under Chapter 2, but even that provision reserving the right to redeem is inconsistent with Section 5281 found in Chapter 2, for said [91] provision to redeem in Section 5253 reserves the right to redeem after fifteen years from date of issue and Section 5281 provides for redemption when the bonds shall mature, and under Section 5274 of Chapter 2 county and municipal bonds may mature at any time from one to forty years after their date of issuance.

Proposition number 4 to the effect that the provision in Section 5260, in Chapter 1 of Title 52 of the Civil Code, 1913, authorizing the State Loan Commissioners, on demand from the board of supervisors or the proper authorities of municipalities or school districts, to provide for the redeeming or refunding of county, municipal or school district indebtedness in the same manner as other state indebtedness, refers only to the procedure for re-



funding and does not write into county and municipal bonds issued under Chapter 2, Title 52, Civil Code, 1913, the reservation of the right to redeem bonds issued by the State Loan Commissioners, reserved to the state by section 5253 of Chapter 1 of said title 52, seems clear from the language used. Said section 5260 does not provide that counties, municipal- [92] ities and school districts shall reserve the right to redeem or refund their bonds at the same time or times that state bonds may be redeemed or refunded, but provides only that the "Loan Commissioners shall provide for the redeeming or refunding of the county, municipal and school district indebtedness upon the official demand of said authorities in the same manner as other state indebtedness and they shall issue bonds for any indebtedness now allowed or that may be hereafter allowed by law to said counties, municipalities or school districts upon official demand of said authorities." This language is not capable of being construed as making county and municipal bonds redeemable or callable at the time provided by Section 5253 for state bonds. It is well settled by the authorities that the phrase "In the same manner" is not applicable to substance but only to procedure and is the equivalent of saying by "similar proceedings so far as \* \* \* applicable to the subject matter," *Commonwealth vs. Hildebrand*, 11 Atl. (2) 688. In this case the court said:

"The phrase 'in the same manner', however, has a well-understood meaning in statutory con-

struction and its restrictive or limiting [93] force applies not to substance, but to procedure only; it is the equivalent of saying 'by similar proceedings, so far as \* \* \* applicable to the subject-matter.' Wilder's S. S. Co. v. Low, 9 Cir., 112 F. 161, 164, *Durousseau v. United States*, 6 Cranch 307, 317, 3 L. Ed. 232. If the legislature had intended that appeals under both sects. 404 and 410 should not only be held in the same manner, but should be subject to the same limitations of appellate review, it is probable that the legislature would have so indicated."

Proposition number 5, above stated, to the effect that the provisions of 5273 providing a date of maturity for bonds to be stated in the call for election and provisions of Section 5279 providing for the levy of a tax to pay said bonds until they mature, and the provisions of Section 5281 providing for the retirement of such bonds after maturity, cannot be held to have been repealed by the provisions for refunding and the provisions reserving the right to call bonds contained in Sections 5252 and 5253, Chapter 1 of said Title 52, is very clear for several reasons. In the first place as has been pointed out, the provisions in Chapter 2 refer to an entirely different kind of bond than do the provisions in Chapter 1.

In the second place, no express repeal being made, an implied repeal will not be pre- [94] sumed unless

the two provisions cannot stand together. *Southern Pacific Company v. Gila County*, 109 Pac.(2) 610, in which case this court quotes the rule laid down in its former decisions, as follows:

“It should also be borne in mind that repeals by implication are not favored and will not be indulged if there is any other reasonable construction.”

Furthermore, while the main portion of Chapter 2, Title 52, Civil Code 1913, first originated in Chapter 29 Session Laws 1912, Regular Session, and the main provisions of Chapter 1, Title 52, Civil Code of 1913, first originated in Chapter 29 of Session Laws of 1912, First Special Session, yet some of the provisions in said Chapter 2 were first enacted by Chapter 22, Session Laws of 1913, Third Special Session, so it is hard to say which of the two chapters is the later enactment. Be that as it may, the later act did not comply with the constitutional provision for amending the prior act and, hence, ought not to be construed as having the effect of amending the prior act, if that can be avoided. *State vs. Kansas City*, 204 Pac. 690, 691. Lastly, the provisions of all of the original acts were inserted in the revisions of 1913 and 1928 [95] and by reason of such insertion in such revisions both chapters must be given effect as far as possible on the presumption that the legislature intended that each should be preserved to operate in its particular field.

*Sou. Pac. R. R. Co. v. Gila County*, 109 Pac. (2) 610, 611.

Proposition number 6 stated above, to the effect that while it is the duty of the Loan Commissioners to proceed to refund county bonds on the request of the county under the provisions of Section 5260, Chapter 1, Title 52, Civil code of 1913, the mandate cannot issue in this case because Maricopa County does not show that it has any bonds to be refunded as the bonds in question are not yet due and are not subject to call before maturity, necessarily follows from what has been stated above under the five preceding propositions. It is obvious from the present rate of interest on municipal bonds and from the allegations of the plaintiff's complaint that the holders of the bonds in question will not voluntarily surrender them at the present time and if the views we have above expressed are correct, said bonds are not callable or redeemable until their respective dates of maturity, as [96] such dates were approved by the electors at the election and as they were definitely fixed in the bonds in pursuance of Chapter 2, Title 52, Civil Code of 1913, under which they purport to be issued, and were in fact issued. If we are right in our construction of the statutes involved, Maricopa County has no more right to compel the holders of these bonds to accept present payment merely because the county can save money by doing so than the bondholders had the right a few years ago when the county was delinquent in its payments, to compel the county to issue longer term bonds at a lower rate of interest as the bondholders then thought

for their best interest. Maricopa County then saw fit to stand on its contract as it was written and we believe the bondholders likewise have the right to stand on the same contract.

Proposition number 7, to the effect that mandamus should not issue to require the Loan Commissioners to proceed under the provisions of Section 5260, Chapter 1, Civil Code of 1913, until Maricopa County has established its right to call the bonds in question by appropriate proceedings against the bondholders, [97] seems obviously a correct statement of law relating to mandamus. The rule repeatedly stated by this court and other courts is unqualifiedly to the effect that mandamus will not issue to compel a public officer to perform an act unless it is his clear duty to do so. *Miners & Merchants Bank vs. Herron*, 46 Ariz. 71, 80; 34 American Jurisprudence Sec. 36, p. 831. If the peremptory writ should issue the Loan Commissioners would be obliged to proceed to issue the refunding bonds. The bondholders, not being bound by this proceeding, would naturally refuse to exchange their bonds and would unquestionably resort to the courts, State or Federal, to establish their contention. Assuming that this court would consider itself bound by a decision made in this case in which most of the bondholders, except the one that we represent, will have had no opportunity for a hearing, the Federal courts, of course, will not consider themselves so bound and the rule of *Erie v. Tompkins*, 304 U. S. 64, 82 L. Ed. 1188, not applying by



reason of a right under the Federal Constitution being involved, the Federal courts will be obliged [98] to construe the statutory provisions in question independently of any determination made by this court. *Jackson County vs. United States*, 308 U. S. 343, 84 L. Ed. 313, 316. The result will be that the Loan Commissioners will have been forced into a long period of litigation by the mandate of this court. We do not believe that this court has the power to issue the writ under those circumstances.

If Maricopa County desires to refund these bonds, there is no obstacle under the provisions of the declaratory judgment act and rules 18a and 23a (Secs. 21-507, 21-524 Ann. Code 1939) of the rules of civil procedure to its bringing an appropriate proceeding against the bondholders to determine their rights under the bonds, which they hold and if it shall be determined in such proceeding that the bonds in question are callable, we do not believe a mandate against the Loan Commissioners will be necessary.

Respectfully submitted,

GUST, ROSENFELD, DIVEL-  
BESS, ROBINETTE AND  
COOLIDGE,

201 Professional Building,  
Phoenix, Arizona,

By J. L. GUST [99]



“EXHIBIT B”

MINUTES OF A MEETING OF THE LOAN  
COMMISSIONERS OF THE STATE OF  
ARIZONA.

A meeting of the Loan Commissioners of the State of Arizona was held pursuant to the foregoing consent to said meeting in the office of the Governor of the State of Arizona, at the Capitol Building, in the City of Phoenix, within the said State of Arizona, at 3:00 o'clock P. M. on the 10th day of February, 1943.

The following, constituting all the members of the Loan Commissioners of the State of Arizona, were present:

Sidney P. Osborn, Governor

Ana Frohmiller, State Auditor

J. D. Brush, State Treasurer

The Governor announced that the Loan Commissioners were convened in meeting for the purpose of considering the bid of Bank of America National Trust & Savings Association, Boettcher and Company and R. N. Moulton & Company, which was filed and submitted to the Loan Commissioners of the State of Arizona by said bidders on February 1, 1943, whereby said bidders bid for \$4,100,000 refunding bonds of the State of Arizona as described and offered for sale in that certain call for bids authorized by the Loan Commissioners of the State of Arizona pursuant to a resolution adopted on November 19, 1942.

Following the discussion and consideration of said bid of Bank of America National Trust & Savings Association, Boettcher and Company and R. N. Moulton & Company, [100] Commissioner Brush offered and moved the adoption of the following resolution:

“RESOLUTION OF THE LOAN COMMISSIONERS OF THE STATE OF ARIZONA SELLING \$4,100,000 PRINCIPAL AMOUNT OF REFUNDING BONDS TO BE ISSUED FOR THE PURPOSE OF REDEEMING A LIKE PRINCIPAL AMOUNT OF BONDS OF MARICOPA COUNTY, ARIZONA; PROVIDING FOR THE REDEMPTION OF OUTSTANDING BONDS OF MARICOPA COUNTY AGGREGATING THE PRINCIPAL AMOUNT OF \$4,100,000; SETTING ASIDE THE PROCEEDS OF THE SALE OF STATE OF ARIZONA REFUNDING BONDS FOR THE PURPOSE OF REDEEMING SAID BONDS OF MARICOPA COUNTY AND DIRECTING NOTICE OF SUCH REDEMPTION TO BE GIVEN.

Whereas, the Loan Commissioners of the State of Arizona, heretofore, to-wit, on November 19, 1942, authorized the issuance of \$4,100,000 principal amount State of Arizona Refunding Bonds and directed notice of sale thereof to be given; and

Whereas, such notice of the sale of said Refunding Bonds has been duly given and published and at the time and place fixed for the receipt of bids, the Loan Commissioners duly met to consider all bids received for the purchase of said bonds and to take such action thereon as might be deemed advisable; and

Whereas, Bank of America National Trust & Savings Association, Boettcher and Company, and R. N. Moulton and Company, duly filed their bid for the purchase of said bonds at the price of par and a premium accompanied by a cashier's check on the First National Bank of Arizona, which is a member bank of the Federal Reserve System, [101] payable to the Treasurer of the State of Arizona in the sum of \$205,000; and

Whereas, said bid for the purchase of said bonds and the bidders' good faith check accompanying the same are satisfactory and in accordance with law and the Board of Supervisors of Maricopa County has, by resolution determined that said bid is satisfactory and should be accepted; and

Whereas, it appears that said bid should be accepted and said bonds awarded as in this resolution provided;

Now, Therefore, Be It Resolved by the Loan Commissioners of the State of Arizona, as follows:

Section 1. Refunding Bonds of the State of Arizona in the aggregate principal amount of \$4,100,000 are hereby awarded and sold to Bank of America National Trust & Savings Association, Boettcher and Company, and R. N. Moulton and Company in accordance with and subject to the terms and conditions of their said bid as follows, to-wit:

‘February 1, 1943

‘Loan Commissioners of the  
State of Arizona  
Phoenix, Arizona

Gentlemen:

For all, but not less than all of \$4,100,000.00 par value legally issued State of Arizona Refunding Bonds to be dated as of the date of their issuance, [102] to bear interest at the rate of  $2\frac{3}{4}$  per cent per annum, payable semiannually January 15 and July 15, of the denomination of \$1,000.00 each, numbered from 1 to 4100, both inclusive, and maturing \$300,000.00 principal amount on July 15 in each of the years 1944 to 1956, both inclusive, and \$200,000.00 on July 15, 1957, all in accordance with your published notice of sale, we bid you the sum of par and accrued interest to date of delivery, together with a premium of \$800.00. We further agree as part of the purchase price that we will waive interest on the Refunding Bonds from the

date of their issue to April 15, 1943, this concession on our part being made for the purpose of enabling you to complete the proceedings for the call and redemption of the outstanding bonds of Maricopa County to the end that double interest will not accrue on both the Refunding Bonds and the outstanding Maricopa County bonds. This bid is subject to the following conditions, each of which is hereby made a condition precedent to any liability on our part.

(1) That this bid shall be accepted promptly, and notice thereof given to us, in no event later than 5:00 o'clock P. M., Pacific War Time, February 10, 1943.

(2) That said Refunding Bonds shall be duly executed and delivered to us on payment of the purchase price therefor not later than 12:00 o'clock Noon, Pacific War Time, March 15, 1943.

(3) That in the event that prior to the delivery of said Refunding Bonds to us the income received by private holders from bonds of the same type and character shall be taxable or subjected to tax or be declared to be taxable by the terms of any Federal Income Tax law either by ruling of the Bureau of Internal Revenue or by decision of any Federal Court or by amendment of the Federal Income Tax laws or otherwise, we may at our election be relieved of our

obligations under this agreement to purchase said bonds.

(4) The Loan Commissioners of the State of Arizona and the Board of Supervisors of Maricopa County, State of Arizona, will adopt such proceedings and take such action [103] as may legally be required for the purpose of calling and redeeming the outstanding \$4,100,000.00 principal amount of bonds of the County of Maricopa proposed to be refunded from the proceeds of the issuance and sale of said Refunding Bonds of the State of Arizona and that such outstanding bonds of the County of Maricopa to the amount aforesaid will be called and redeemed from the proceeds of the sale of said Refunding Bonds (which shall be used for no other purpose) and that interest on said bonds of the County of Maricopa will cease from and after the date fixed for such redemption.

(5) That you will furnish us with a full, true and correct transcript of the proceedings for the issuance of said Refunding Bonds duly certified on the basis of which we will be able to secure at our own expense, at or before the delivery of said Refunding Bonds to us, the unqualified legal opinion of Messrs. Orrick, Dahlquist, Neff & Herrington of San Francisco approving the legality of the proceedings for the issuance of said Refunding Bonds and the proceedings taken or to be



taken for the call and redemption of a like principal amount of outstanding bonds of Maricopa County, State of Arizona, in all respects. If our said attorneys are unable to render their opinion approving the legality of said Refunding Bonds and said proceedings for the redemption of said outstanding bonds of Maricopa County in all respects, this bid is to be deemed cancelled and we are to be relieved from all liability hereunder, with like force and effect as though this bid had not been made.

We hand you herewith cashiers check of the First National Bank of Arizona, which is a member bank of the Federal Reserve System, in the sum of \$205,000.00 payable to the order of the State Treasurer of the State of Arizona, to be held in accordance with your advertised notice of the sale of said bonds, but to be returned to us uncashed in the event you are unable to comply with each and all of the conditions precedent [104] above specified.

Very truly yours,

BANK OF AMERICA  
NATIONAL TRUST & SAV-  
INGS ASSOCIATION  
BOETTCHER AND COMPANY  
R. N. MOULTON AND  
COMPANY

By FRANCES MOULTON'

Section 2. This award and the sale of said Refunding Bonds is made subject to the following conditions to which said successful bidders have consented and agreed, to-wit:

The Loan Commissioners shall have the right to deliver said Refunding Bonds to said bidders subsequent to March 15, 1943, if it proves to be impracticable to print, lithograph or execute said bonds prior to said date, or to make delivery thereof prior to said date by reason of litigation or any other cause whatsoever, and any delivery of said bonds made subsequent to said date shall constitute good delivery thereof in accordance with said notice of sale, provided all other terms and conditions of said bid shall have been duly complied with.

Said purchasers shall have the right upon five days written notice to the Loan Commissioners to terminate said extended period of delivery and require that delivery of said bonds be made to them not later than five days from the date of said notice. If such delivery of said bonds is not so made to said purchasers by the State Treasurer or the Loan Commissioners within the [105] said period of five days from the date of said notice, this sale shall be deemed cancelled and both the Loan Commissioners and said purchasers shall be relieved of all obligations one to the other. The Loan Commissioners shall be under no liability for damages for failure to deliver said bonds to said purchasers

in the event of cancellation of this sale nor shall said purchasers be under any liability to the Loan Commissioners or the State of Arizona. In the event of such cancellation of this sale the good faith check of \$205,000 deposited by said bidders shall be promptly returned to said bidders.

Section 3. Forthwith upon the payment into the state treasury of the proceeds of the sale of said \$4,100,000 principal amount of State of Arizona Refunding Bonds, the state treasurer shall apportion them to a special fund which is hereby designated the 'Maricopa County Highway Bond Redemption Fund.' Out of the moneys in said Maricopa County Highway Bond Redemption Fund the state treasurer shall pay a like principal amount of \$4,100,000 of bonds of Maricopa County designated and referred to in the resolution of the Loan Commissioners adopted November 19, 1942, which is hereby referred to and by reference incorporated herein and made a part hereof. [106]

Section 4. The Board of Supervisors of Maricopa County and the county treasurer thereof shall cause to be deposited with the state treasurer in a special fund which is hereby designated the 'Maricopa County Highway Bond Interest Fund,' the amounts necessary to pay interest on the bonds of Maricopa County called for redemption, from the last interest payment date to the date of redemption.

The moneys in said Maricopa County Highway Bond Interest Fund shall be used and applied by the state treasurer for the payment of interest from the last ensuing interest payment date to the date of redemption of said Maricopa County bonds.

Section 5. Forthwith upon the deposit of said proceeds of sale of said State of Arizona Refunding Bonds in said Maricopa County Highway Bond Redemption Fund and said interest moneys in said Maricopa County Highway Bond Interest Fund, it is hereby found and determined that there will be in the state treasury of the State of Arizona a sum sufficient for the redeeming of said outstanding bonds of Maricopa County, State of Arizona, for the redemption of which said State of Arizona refunding bonds are authorized to be issued.

Section 6. Upon the deposit of the funds as provided in Section 5 hereof, the state [107] treasurer of the State of Arizona is hereby authorized and directed to call for redemption and to redeem all of the outstanding bonds of Maricopa County more particularly described in the Notice of Redemption hereinafter set forth. The state treasurer shall cause notice of such call for redemption to be published at least two (2) consecutive times in the 'Arizona Weekly Gazette,' a newspaper published in the City of Phoenix, the state capitol of the State

of Arizona, and in addition thereto said state treasurer shall cause said notice to be published once a week for one (1) month in three (3) newspapers published in the State of Arizona (no two of which shall be published in the same county), and such notice shall be published in the 'Chandler Arizonan,' a newspaper published and circulated in the County of Maricopa, State of Arizona, and in the 'Nogales International,' a newspaper published and circulated in the County of Santa Cruz, State of Arizona, and in the 'Casa Grande Dispatch,' a newspaper published and circulated in the County of Pinal, State of Arizona. In addition to such publications in the State of Arizona, which are hereby declared to be sufficient and to constitute adequate public notice of such call for redemption, the state treasurer is hereby authorized to [108] cause such Notice of Redemption to be published once in 'The Bond Buyer,' a publication in the City and State of New York and of general circulation throughout the United States of America among dealers in municipal bonds and institutions and individual investors holding municipal bonds, and, also, to cause such Notice of Redemption to be published once in the 'Wall Street Journal, Pacific Coast Edition,' a newspaper published in the City and County of San Francisco, State of California, and of general circulation throughout the Pacific Coast of the



United States among municipal bond dealers, investors and institutional holders of municipal bonds; but no error or informality in such publication in said newspapers published in New York and San Francisco, respectively, or failure of publication in either or both thereof, shall affect the validity of such call for redemption, provided that notice thereof be published in said newspapers in the State of Arizona for the periods above specified. Said state treasurer is further authorized to cause a copy of such advertised Notice of Redemption to be mailed to Bankers Trust Company of the City of New York, State of New York, and to each bank or trust company or paying agent at which the interest on said bonds of Maricopa County hereby called for redemption was made payable.

Section 7. Said notice of call for redemption shall be substantially in the following form: [109]

NOTICE OF REDEMPTION  
MARICOPA COUNTY STATE OF  
ARIZONA HIGHWAY  
BONDS

Notice Is Hereby Given, that pursuant to law and the proceedings of the Board of Supervisors of Maricopa County and the Loan Commissioners of the State of Arizona, all of the following described bonds of Maricopa County, State of Arizona are



hereby called for redemption and will be paid on ....., 1943, to-wit:

<u>Name of Bond</u>	<u>Date of Issue</u>	<u>Bond Numbers</u> (all inclusive)
Maricopa County Highway Bonds	June 15, 1919	2301 to 4000
Maricopa County Highway Bonds	January 15, 1921	6101 to 8500

Said bonds will be redeemed at the face amount thereof and accrued interest thereon to and including ....., 1943. Said bonds hereby called for redemption must be surrendered on said redemption date (with all interest coupons maturing subsequent to said redemption date) at the office of the state treasurer of the State of Arizona, Capitol Building, Phoenix, Arizona, for payment and cancellation. If any of said bonds hereinabove numbered and described are not presented for payment and cancellation thirty (30) days after the first publication of this notice, to-wit, on or [110] before ....., 1943, interest on all such bonds shall cease from and after said date.

This notice is given pursuant to proceedings of the Loan Commissioners of the State of Arizona and the concurrent action of the Board of Supervisors of Maricopa County, State of Arizona, adopting and ratifying the same.

Dated, Phoenix, Arizona, ....., 1943.

.....  
State Treasurer of the State  
of Arizona

.....  
County Treasurer of Maricopa  
County, State of Arizona

Section 8. If the state treasurer has knowledge of the names and addresses of the holders of any of said bonds hereby called for redemption, said state treasurer is further authorized and directed to deposit in the United States Post Office at Phoenix, Arizona, a copy of the foregoing notice of call for redemption, enclosed in a sealed envelope with postage thereon prepaid, addressed respectively to such owner or owners whose names and addresses are known to said state treasurer, each of which notices shall be mailed, as above provided, by depositing the same in the United States Post Office at least thirty (30) days prior to said last mentioned redemption date. [111]

Section 9. Whenever such outstanding bonds of Maricopa County hereby called for redemption are presented for payment, the state auditor shall endorse on each bond the amount due thereon and shall write across the face of each bond the date of its surrender and the name of the person surrendering the same and shall keep proper record thereof, and when the state

treasurer pays any of said bonds of Maricopa County so called for redemption, he shall cancel such bonds by perforating the same and indorsing thereon by writing or stamping in ink the words 'Redeemed and Cancelled', with the date of cancellation, and shall thereupon cause said bonds so cancelled to be delivered to the county treasurer of Maricopa County, who shall give his receipt therefor, and such receipt shall be full acquittance to the state treasurer and the state auditor of the State of Arizona for the application of the moneys in the Redemption Fund hereinabove specified, used and applied for the purpose of redeeming said bonds of Maricopa County.

Section 10. This resolution shall take effect immediately.

Passed and Adopted by the Loan Commissioners of the State of Arizona, on this 10th [112] day of February, 1943.

SIDNEY P. OSBORN

Governor

ANA FROHMILLER

State Auditor

J. D. BRUSH

State Treasurer

Loan Commissioners of the  
State of Arizona."

\* \* \* \*

The foregoing motion was seconded by Commissioner Frohmiller, whereupon the motion was

adopted by the affirmative vote of all the members of the Loan Commissioners of the State of Arizona, voting as follows:

Sidney P. Osborn, Governor	Yes
Ana Frohmiller, State Auditor	Yes
J. D. Brush, State Treasurer	Yes

The Governor thereupon declared that the foregoing resolution had been unanimously adopted by the Loan Commissioners of the State of Arizona.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.

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State Treasurer

[Endorsed]: Filed May 22, 1943. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Gwen. Roby, Deputy Clerk. [113]

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[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT UNDER RULE 56

State of Arizona,  
County of Maricopa—ss.

Earl Anderson, being first duly sworn, deposes and says:

1. That he is now and was at all the times herein mentioned, and is now, the Chief Assistant Attorney General of the State of Arizona; that in such

capacity he is personally familiar with the facts attendant upon the indebtedness of the County of Maricopa in the principal amount of \$4,100,000 of Maricopa County Highway Bonds. That in such capacity he is personally familiar with the powers and duties of the Loan Commissioners of the State of Arizona, said Commissioners being Sidney P. Osborn, Governor of the State of Arizona; Ana Frohmiller, State Auditor of the State of Arizona, and J. D. Brush, State Treasurer of the State of Arizona, in respect of funding, refunding, and [114] redeeming the indebtedness of said State of Arizona, counties, cities, and other municipalities of said State of Arizona, and the laws and statutes of said state in relation thereto.

2. That on July 7, 1941, the Board of Supervisors of Maricopa County, defendants herein, passed and adopted a resolution officially demanding that the Loan Commissioners of the State of Arizona, redeem and refund issued and outstanding Maricopa County Highway Bonds in the aggregate principal amount of \$4,900,000, which aggregate principal amount was outstanding as of said July 7, 1941.

3. That on November 7, 1941, said Loan Commissioners informed the Board of Supervisors of Maricopa County, in writing, that they were unauthorized to refund said outstanding indebtedness of Maricopa County as demanded by Maricopa County, as aforesaid, and said Loan Commissioners did thereupon refuse to redeem and refund said out-

standing Highway Bonds of Maricopa County or to provide for the refunding thereof, and thereupon, to-wit, on February 2, 1942, Maricopa County filed an original action in mandamus in the Supreme Court of the State of Arizona entitled: "Maricopa County, a Municipal Corporation, Plaintiff, vs. Sidney P. Osborn, Governor of the State of Arizona, Ana Frohmiller, State Auditor, and Joe Hunt, State Treasurer, constituting the Loan Commissioners of the State of Arizona, Defendants," No. 4489, to command said Loan Commissioners to redeem and refund said outstanding indebtedness of Maricopa County notwithstanding the refusal of said Loan Commissioners so to do.

4. That said original action filed in the Supreme Court of the State of Arizona, duly came on for hearing and decision, and on May 4, 1942, said court duly rendered and entered [115] its judgment making peremptory the alternative writ of mandamus which had theretofore issued in said action; and by said peremptory writ of mandamus said Loan Commissioners were commanded to redeem said outstanding indebtedness of Maricopa County. That said decision is reported in ..... Ariz. .... and 125 P. (2d) 703, and holds and determines that Maricopa County Highway Bonds, herein the subject of litigation, are and were at all times subject to redemption and refunding prior to their respective fixed maturity dates by said Loan Commissioners of the State of Arizona. That for this reason said Loan Commissioners were commanded to redeem said outstanding indebtedness of Maricopa



County by the issuance of said peremptory writ of mandamus.

5. That pursuant to said peremptory writ of mandamus issued from the Supreme Court of the State of Arizona, said Loan Commissioners duly passed and adopted a resolution authorizing the issuance of refunding bonds of the State of Arizona for the purpose of redeeming said Maricopa County Bonds then outstanding. That through proceedings duly and regularly taken under the laws of the State of Arizona, due notice was given and bids were called for by said Loan Commissioners for the purchase of refunding bonds of the State of Arizona in the principal amount of \$4,100,000. That the Loan Commissioners of the State of Arizona on February 10, 1943, accepted the joint bid of, and awarded the purchase of said refunding bonds to, Bank of America National Trust and Savings Association, Boettcher and Company, and R. H. Moulton & Company.

6. That notwithstanding said award and sale of said State of Arizona Refunding Bonds, said Loan Commissioners, on [116] February 12, 1943, advised the Board of Supervisors of Maricopa County, in writing, as such Loan Commissioners, that they would not execute or deliver any of said refunding bonds, and said Loan Commissioners refused to execute or deliver any of said State of Arizona Refunding Bonds to said purchasers.

7. That thereupon, to-wit, on March 4th, 1943, Maricopa County filed a second original action in mandamus in the Supreme Court of the State of

Arizona entitled: "Maricopa County, a body politic and corporate, plaintiff, vs. Sidney P. Osborn, Governor of the State of Arizona; Ana Frohmiller, State Auditor of the State of Arizona, and J. D. Brush, State Treasurer of the State of Arizona, defendants," No. 4606, to command said Loan Commissioners of the State of Arizona to execute and deliver said refunding bonds to the purchasers thereof. That said Loan Commissioners duly appeared and made return in said proceedings and filed briefs therein. That said action in said Supreme Court of the State of Arizona duly came on for hearing and decision, and on April 12, 1943, said court duly rendered and entered its judgment making peremptory the alternative writ of mandamus which had theretofore issued in said action, as reported in 136 Cal. (2d) 270 (Adv. Sheet Vol. 1, May 14, 1943). That in said decision said court reaffirmed its judgment in said prior original mandamus proceeding brought by Maricopa County in the case of Maricopa County v. Osborn, et al. (1942) ..... Ariz. ...., 125 P. (2d) 703, and held and determined that said outstanding Maricopa County Highway Bonds are and were at all times subject to redemption and refunding by the Loan Commissioners of the State of Arizona prior to their respective fixed maturity dates. That for this reason said peremptory writ of mandamus was issued by said Supreme Court of the State of [117] Arizona to command said Loan Commissioners of the State of Arizona to execute and deliver State of Arizona Refunding Bonds in the principal amount of

\$4,100,000 to the purchasers thereof.

8. That said decisions of the Supreme Court of the State of Arizona are valid and conclusive adjudications to the effect that Maricopa County Highway Bonds are redeemable and refundable prior to their maturity dates under the laws of the State of Arizona. That said decisions are binding and conclusive on defendants as Loan Commissioners of the State of Arizona making it their legal duty to redeem and refund said outstanding indebtedness of the County of Maricopa by the issuance of State of Arizona Refunding Bonds.

9. That by virtue of the decision of the Supreme Court of the United States in the case of *Erie R.R. Co. v. Tompkins* (1938) 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 118, these decisions of the Supreme Court of Arizona finally establishing the law of the State of Arizona, as affiant verily believes, are binding and conclusive upon this court in respect of the issues raised in this action.

EARL ANDERSON

Subscribed and sworn to before me this 22nd day of May, 1943.

AGNES WESTRA

Notary Public

(Seal)

My Commission will expire: July 2, 1943.

[Endorsed]: Filed May 22, 1943. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Gwen Roby, Deputy Clerk. [118]

[Title of District Court.]

MINUTE ENTRY OF JUNE 8, 1943

(Phoenix Division)

April 1943 Term

At Phoenix

Honorable Dave W. Ling, United States District  
Judge, Presiding.

[Title of Cause.]

Defendants' Motion for Summary Judgment under Rule 56(b) comes on regularly for hearing this day.

John L. Gust, Esquire, appears as counsel for the plaintiff. Leslie C. Hardy, Esquire, is present on behalf of the defendants.

Said Motion is argued, submitted and by the Court taken under advisement. [119]

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[Title of District Court.]

MINUTE ENTRY OF JULY 23, 1943

(Phoenix Division)

April 1943 Term

At Phoenix

Honorable Dave W. Ling, United States District  
Judge, Presiding.

[Title of Cause.]

Defendants' Motion for Summary Judgment having been argued, submitted and by the Court taken under advisement,

It is ordered that said Motion for Summary Judgment be and it is granted. [120]

In the United States District Court  
for the District of Arizona

No. Civil 385—Phoenix

E. J. JONES,

Plaintiff,

v.

JIM BRUSH, State Treasurer of the State of Arizona, SIDNEY P. OSBORN, Governor of the State of Arizona, DAN E. GARVEY, Secretary of State of the State of Arizona, MARICOPA COUNTY, JOHN A. FOOTE, ED OGLESBY and PHIL ISLEY, constituting the Board of Supervisors of Maricopa County, Arizona,

Defendants.

### SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS

Defendants herein having moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the motion for summary judgment having been argued to the Court on June 8, 1943, by counsel for the plaintiffs and defendants, whereupon the said motion for summary judgment was submitted to the Court for decision, and the court, being advised in the law, on July 23, 1943, ordered that said motion for summary judgment be granted in favor of the defendants:

Now, Therefore, in consideration of the premises,

It is Ordered, Adjudged and Decreed, and the Court does hereby order, adjudge and decree, that defendants have summary judgment in their favor against plaintiffs herein, together with the defendants' costs to be taxed by the Clerk of this Court.

Dated this 11 day of Aug. 1943.

DAVE W. LING

United States District Judge [121]

Service of a true copy of the foregoing proposed form of Summary Judgment in Favor of Defendants is acknowledged this 24th day of July, 1943.

GUST, ROSENFELD, DIVELBESS,  
ROBINETTE & COOLIDGE

By FRED V. ROSENFELD

Attorneys for Plaintiffs

[Endorsed]: Proposed Summary Judgment. Filed Jul. 24, 1943. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Gwen Roby, Deputy Clerk.

[Endorsed]: Summary Judgment. Filed Aug. 12, 1943. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Wm. H. Loveless, Chief Deputy Clerk. [122]



In the United States District Court  
for the District of Arizona

MINUTE ENTRY OF AUGUST 12, 1943  
(Phoenix Civil Order Book)

The following proceedings were had before Honorable Dave W. Ling, United States District Judge, in Chambers at Los Angeles, California, on Wednesday, August 11, 1943:

Civ-385

E. J. JONES,

Plaintiff,

v.

JIM BRUSH, State Treasurer of the State of Arizona, SIDNEY P. OSBORN, Governor of the State of Arizona, DAN E. GARVEY, Secretary of State of the State of Arizona, MARICOPA COUNTY, JOHN A. FOOTE, ED OGLESBY and PHIL ISLEY, constituting the Board of Supervisors of Maricopa County, Arizona,

Defendants.

SUMMARY JUDGMENT IN FAVOR  
OF DEFENDANTS

Defendants herein having moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the motion for summary judgment having been argued to the Court on June 8, 1943, by counsel for the plaintiffs and defendants, whereupon the said motion for summary judgment

was submitted to the Court for decision, and the court, being advised in the law, on July 23, 1943, ordered that said motion for summary judgment be granted in favor of the defendants:

Now, Therefore, in consideration of the premises,

It Is Ordered, Adjudged and Decreed, and the Court does hereby order, adjudge and decree, that defendants have summary judgment in their favor against plaintiffs herein, together with the defendants' costs to be taxed by the Clerk of this Court.

Dated this 11 day of Aug., 1943.

DAVE W. LING

United States District Judge [123]

[Title of District Court.]

Phoenix Civil Docket

Civ-385 Phoenix

[Title of Cause.]

(Clerk's Notation of Judgment in Civil Docket)

### FILINGS—PROCEEDINGS

Date

1943

\* \* \* \* \*

Aug. 12 Enter and file Summary Judgment in  
Favor of Defendants, signed Aug. 11,  
1943 at Los Angeles.

\* \* \* \* \*

[124]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that E. J. Jones, the plaintiff, does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from that certain judgment rendered in the above entitled court and cause on the 12th day of August, 1943, said Judgment being entitled summary judgment in favor of defendants, and signed by Judge Ling on August 11, 1943, and filed and entered in the Civil Docket on August 12, 1943.

GUST, ROSENFELD, DIVELBESS,  
ROBINETTE AND COOLIDGE,

201 Professional Building,  
Phoenix, Arizona.

By J. L. GUST

Attorneys for Plaintiff

Received copy of within Notice of Appeal this  
7th day of September, 1943.

EARL ANDERSON

LESLIE C. HARDY

Attorneys for Defendants

[Endorsed]: Filed Sep. 7, 1943. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Gwen Roby, Deputy Clerk. [125]

[Title of District Court and Cause.]

BOND ON APPEAL

Know All Men By These Presents:

That we, E. J. Jones, the plaintiff above named, as principal, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto Jim Brush, State Treasurer of the State of Arizona, Sidney P. Osborn, Governor of the State of Arizona, Dan E. Garvey, Secretary of State of of State of Arizona, Maricopa County, John A. Foote, Ed Oglesby and Phil Isley, constituting the Board of Supervisors of Maricopa County, Arizona, the defendants above named, in the sum of Two Hundred Fifty (\$250.00) Dollars Lawful money of the United States, to be paid to the said Jim Brush, State Treasurer of the State of Arizona, Sidney P. Osborn, Governor of the State of Arizona, Dan E. Garvey, Secretary of State of the State of Arizona, Maricopa County, John A. Foote, Ed Oglesby and Phil Isley, constituting the Board of Supervisors of Maricopa County, Arizona, for which payment well and truly to be made we bind ourselves and our successors, firmly by these presents. [126]

The Condition Of This Obligation Is Such That:

Whereas, That certain judgment entitled Summary Judgment in Favor of Defendants was rendered on the 12th day of August, 1943, in the above entitled court and cause, said judgment being signed

by Judge Ling on August 11, 1943, and filed and entered in the Civil Docket on August 12, 1943; and

Whereas, the same was in favor of the above named defendants and against the principal on this bond; and

Whereas, said principal has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from said judgment,

Now, Therefore, if the said principal above named shall prosecute his said appeal with effect and shall pay all costs which have accrued in the United States District Court for the District of Arizona, and which may accrue in the United States Circuit Court of Appeals for the Ninth Circuit, then this obligation shall be void, otherwise it shall remain in full force and effect.

In Witness Whereof said principal and surety have executed these presents on this 4th day of September, 1943.

E. J. JONES

By J. L. GUST

His Attorney

Principal

[Seal]

FIDELITY AND DEPOSIT

COMPANY OF MARYLAND,

By MARJORIE WESCOTT

Attorney-in-Fact

Surety

Received copy of within Bond on Appeal this  
7th day of September, 1943.

LESLIE C. HARDY

EARL ANDERSON

Attorneys for Defendants

[Endorsed]: Filed Sep. 7, 1943. Edward W. Scruggs, Clerk United States District Court for the District of Arizona. By Gwen. Roby, Deputy Clerk. [127]

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[Title of District Court and Cause.]

STATEMENT OF POINTS BY PLAINTIFF  
UPON WHICH HE RELIES FOR A RE-  
VERSAL OF THE JUDGMENT.

1. The Federal Courts have jurisdiction of this case for the right asserted by the plaintiff arises out of the act of Congress providing for the admission of Arizona as a state, known as the Arizona Enabling Act.

2. The Arizona Enabling Act recognizes the right of the state and citizens of the state to bring actions to prevent breaches of trust committed by the officers of the state in charge of the lands donated to the state by the Enabling Act and the funds derived from such lands.

3. The plaintiff, as a citizen and taxpayer of the state of Arizona, has the right under the law of the state to bring an action to enforce the trust created by the Enabling Act.



4. The Enabling Act permits actions to enforce the trusts created by the act to be enforced by the Attorney General of the United States and by any citizen of the state whose right to bring such actions is recognized by the state law. Hence the plaintiff, whose right to bring the action is recognized by [128] the state law, may bring such action in the Federal Court for the reason that a federal question is involved.

5. Since the plaintiff asserts a right under a federal statute, the rule of *Erie R. Co. v. Tompkins* does not apply and the Federal Courts are not bound to follow the decisions of the state court but must exercise their own independent judgment in determining the case.

6. Since the complaint charges that the State Treasurer, Governor and Secretary of State propose to surrender the bonds of Maricopa County held in the trust fund for less than their recognized market value, it plainly states a case of a proposed violation of the Enabling Act, for neither the state nor any of its officials have the right to deplete or diminish the trust fund.

7. The decisions of the Supreme Court of Arizona, holding that the bonds are callable, are no justification for the proposed surrender of the bonds by the state officials as the rights of the trust fund were not in issue in the mandamus cases and the decisions of the Supreme Court of the state do not conclude the federal question involved.

8. The bonds of Maricopa County held in the State School Fund involved in this suit are not callable before their due dates for the following reasons:

(a) Chapter 2, Title 52, Revised Statutes 1913 provides that they shall be issued with definite due dates. The form of the bonds and the coupons attached thereto provide that said bonds shall bear interest until their due dates. Said bonds were ratified by Acts 54 and 86 of the Revised Statutes of 1921, after the form thereof was determined and recorded. No other statute was applicable to said bonds for the reason that said Chapter 2, Title 52, Revised Statutes 1913 is a complete act in [129] itself, providing for the issuance of said bonds and said Acts 54 and 86 Session Laws of 1921, were complete ratifications of said bonds after they were issued.

(b) Chapter 1, Title 52, Revised Statutes of 1913, is not susceptible of an interpretation authorizing the calling of bonds issued under Chapter 2, Title 52, for the reason that said Chapter 1, Title 52, was originally an Act of Congress of June 25, 1890. It was construed by subsequent acts of Congress and the territorial legislature as not authorizing the refunding of bonds thereafter to be issued and as not authorizing the refunding of bonds not yet due without the consent of the holder. It is shown by the proceedings of Congress and the reports

of its committees that said act of Congress was not intended to authorize the calling of bonds not yet due.

(c) Chapter 1, Title 52, was not changed in meaning when it became a law of the State of Arizona by virtue of the constitution nor was it changed in meaning by virtue of its re-enactment by the first special session of the first legislature of the state. Furthermore, any inconsistent provisions of said Chapter 1, Title 52, Revised Statutes 1913 were repealed by the re-enactment of said Chapter 2, as Chapter 20 of the third special session of the first legislature and by virtue of the existing state statute relating to repeal, said Chapter 1, Title 52, was repealed by said Chapter 2, Title 52, not only where it was inconsistent but wherever it covered the same subject matter.

(d) The Revised Code of 1913 as shown by Chapter 64 Session Laws of the third special session of the first legislature was not a revision but a mere compilation of the existing statutes and such compilation did not change [130] the meaning of Chapter 1, Title 52, as it had theretofore existed.

(e) That said Chapter 1, Title 52 was not capable of being construed so as to make bonds issued under Chapter 2, Title 52, callable for the reason that said Chapter 1, Title 52, can reasonably be construed to extend only to bonds that were due or optional at the time of proposed refunding.

(f) Chapter 39 Session Laws of 1927 and Chapters 74 and 75 Session Laws 1935, providing for the refunding of optional bonds only, indicate a policy of the state against permitting the refunding of bonds that were not yet due.

9. The opinions of the Supreme Court of Arizona in the mandamus suits do not consider the statutory history of Chapter 1, Title 52, and are inconsistent in that they hold that the provision providing for the refunding of bonds extends to all bonds whether due or not and yet hold that bonds that are issued under the refunding act itself are not refundable. Said decisions of the Supreme Court overlooked the fact that county, municipal and school district bonds cannot be refunded as state bonds under the provisions of Chapter 1, Title 52, for the reason that under said chapter said bonds, as the law stood before the 1928 code, were required to be issued as state bonds and could not be so issued without violating the state constitution.

10. The decisions of the Supreme Court of Arizona in the mandamus suits is not an adjudication of the rights of the bondholders as no bondholder was a party to the suit and the fact that briefs of amici curiae were filed does not give the decision of the Supreme Court the effect of such an adjudication as amici curiae do not have any control over the suit. The fact that it was stated that one of the amici curiae represented [131] a bondholder cannot bind bondholders generally under the theory that it was a class suit.

11. The complaint shows that the loss to the State School Fund, if the bonds are surrendered as proposed by the State Treasurer, Governor and Secretary of State, will greatly exceed the sum of \$3000.00. The complaint shows an actual controversy, under the proceedings that are actually pending, exists and that it is proper for the court to render a declaratory judgment, declaring that the surrender of the bonds as proposed by the State Treasurer and other state officials is a violation of the Enabling Act of the state.

Dated this 4th day of September, 1943.

GUST, ROSENFELD, DIVEL-  
BESS, ROBINETTE AND  
COOLIDGE,

201 Professional Building,  
Phoenix, Arizona,

By J. L. GUST

Attorneys for Plaintiff

Received copy of the within Statement of Points  
by Plaintiff this 7th day of September, 1943.

EARL ANDERSON

LESLIE C. HARDY

Attorneys for Defendants

[Endorsed]: Filed Sep. 7, 1943. Edward W. Scruggs, Clerk United States District Court for the District of Arizona. By Gwen. Roby, Deputy Clerk. [132]

[Title of District Court and Cause.]

DESIGNATION OF PORTIONS OF THE RECORD AND PROCEEDINGS TO BE CONTAINED IN RECORD ON APPEAL.

Comes now the above named plaintiff and appellant and designates the following portions of the record and proceedings to be contained in the record on appeal:

1. Complaint.
2. Answer of defendants.
3. Notice of Motion for Summary Judgment.
4. Motion for Summary Judgment.
5. Affidavit of Leslie Hardy in support of Motion for Summary Judgment.
6. Affidavit of Earl Anderson in support of Motion for Summary Judgment.
7. Summary Judgment in favor of defendants, signed by the Court and filed in said cause.
8. The Clerk's Notation of Judgment in the Civil Docket.
9. Final Judgment as entered by the Clerk in the Civil Order Book.
10. All minute entries made by the Clerk in said cause.
11. Notice of Appeal.
12. Appeal Bond.
13. This Designation. [133]
14. Statement of Points by Plaintiff Upon Which He Relies for Reversal of the Judgment.



Dated this 4th day of September, 1943.

E. J. JONES,

Plaintiff and Appellant

By J. L. GUST

His Attorney

Received copy of within the 7th day of September, 1943.

EARL ANDERSON

LESLIE C. HARDY

Attorneys for Defendants

[Endorsed]: Filed Sep. 7, 1943. Edward W. Scruggs, Clerk United States District Court for the District of Arizona. By Gwen. Roby, Deputy Clerk. [134]

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[Title of District Court.]

United States of America,  
District of Arizona—ss.

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of said court, including the records, papers and files in the case of E. J. Jones, plaintiff, versus Jim Brush, State Treasurer of the State of Arizona, Sidney P. Osborn, Governor of the State of Arizona, Dan E. Garvey, Secretary of State of the State of Arizona, Maricopa County; John A. Foote, Ed Oglesby and Phil Isley, constituting the Board of Supervisors of Maricopa

County, Arizona, defendants, numbered Civ-385 Phoenix, on the docket of said court.

I further certify that the attached pages, numbered 1 to 134, inclusive, contain a full, true and correct transcript of all the proceedings had in said cause and of all the papers filed therein, together with the endorsements of filing thereon, called for and designated in the Plaintiff's Designation of Portions of the Record and Proceedings to be Contained in Record on Appeal, filed therein and made a part of the transcript attached hereto, as the same appear from the originals of record remaining on file in my office as such clerk in the City of Phoenix, State and District aforesaid.

I further certify that the Clerk's fees for preparing and certifying this said transcript of record amounts to the sum of \$23.85, and that said sum has been paid to me by counsel for the appellant.

Witness my hand and the seal of said court at Phoenix, Arizona, this 16th day of September, 1943.

[Seal]

EDWARD W. SCRUGGS,

Clerk

By WM. H. LOVELESS,

Chief Deputy Clerk. [135]

[Endorsed]: No. 10,560. United States Circuit Court of Appeals for the Ninth Circuit. E. J. Jones, Appellant, vs. Jim Brush, State Treasurer of the State of Arizona, Sidney P. Osborn, Governor of the State of Arizona, Dan E. Garvey, Secretary of State of the State of Arizona, Maricopa County, John A. Foote, Ed Oglesby and Phil Isley, constituting the Board of Supervisors of Maricopa County, Arizona, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Arizona.

Filed September 20, 1943.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

Number 10560

United States Circuit Court of Appeals  
for the Ninth Circuit

E. J. JONES,

Appellant,

vs.

JIM BRUSH, State Treasurer of the State of Arizona, SIDNEY P. OSBORN, Governor of the State of Arizona, DAN E. GARVEY, Secretary of State of the State of Arizona, MARICOPA COUNTY, JOHN A. FOOTE, ED OGLESBY and PHIL ISLEY, Constituting the Board of Supervisors of Maricopa County, Arizona,

Appellees.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL, AND DESIGNATION OF THE PARTS OF THE RECORD WHICH APPELLANT THINKS NECESSARY FOR CONSIDERATION OF SAID POINTS.

Comes now E. J. Jones, Appellant in the above entitled cause, and hereby formally adopts the Statement of Points by plaintiff upon which he intends to rely for a reversal of the judgment filed by the appellant as plaintiff in the United States District Court, for the District of Arizona, which is a part of the record forwarded to this court by

the Clerk of the United States District Court as and for a Statement of Points on which appellant intends to rely on this appeal, required to be filed in this court under Subdivision 6 of Rule 19 of the Rules of this court, and said appellant hereby designates to be printed the whole of the record forwarded to this court by the Clerk of the United States District Court.

Dated this 27th day of September, 1943.

GUST, ROSENFELD, DIVEL-  
BESS, ROBINETTE AND  
COOLIDGE,

201-11 Professional Building,  
Phoenix, Arizona,

J. L. GUST

Attorneys for Appellant

Received copy of the foregoing this 27th day of  
September, 1943.

LESLIE C. HARDY

By E. W. H.

[Endorsed]: Filed Sep. 29, 1943. Paul P. O'Brien,  
Clerk.

